

## DOCUMENT RESUME

ED 411 627

EC 305 817

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TITLE Persons with Developmental Disabilities and the Justice System.  
INSTITUTION Minnesota Univ., Minneapolis. Inst. on Community Integration.  
SPONS AGENCY National Inst. on Disability and Rehabilitation Research (ED/OSERS), Washington, DC.; Administration on Developmental Disabilities (DHHS), Washington, D.C.  
PUB DATE 1997-00-00  
NOTE 30p.  
CONTRACT 90D0032301; H133B30072; 90DN0019/02  
PUB TYPE Collected Works - Serials (022) -- Reports - Descriptive (141)  
JOURNAL CIT Impact; v10 n2 Sum 1997  
EDRS PRICE MF01/PC02 Plus Postage.  
DESCRIPTORS Advocacy; \*Civil Rights Legislation; \*Criminal Law; \*Developmental Disabilities; \*Equal Protection; Law Enforcement; \*Mental Retardation; Resource Materials; \*Victims of Crime  
IDENTIFIERS \*Americans with Disabilities Act 1990

## ABSTRACT

This feature issue of "Impact" focuses on persons with developmental disabilities and the justice system. Articles include: "The Invisible Victims" (Daniel D. Sorensen), which discusses the high rate of people with developmental and other severe disabilities who become victims of crime; "The ADA in the Justice System" (Frank Laski and Kirsten Keefe), which discusses the application of the Americans with Disabilities Act to the justice system to prevent discrimination against people with disabilities; "ABA Mental Health Standards: The Impact on Persons with Developmental Disabilities" (B.J. George), which summarizes the American Bar Association's mental health standards; "Equal Protection of the Law for Crime Victims with Developmental Disabilities" (Dick Sobsey); "The Arc: Tackling Criminal Justice Issues at National, State and Local Levels" (Leigh Ann Reynolds and Rick Berkobien); "Breaking the Cycle: 'Justice Now!'" (Jeri Houchins), which describes a program that works to prevent discriminatory treatment of people with developmental disabilities in the criminal justice system; "Educating for Change: 'Equal Justice'" (Lisa Sonneborn), which highlights a program designed to support people with mental retardation who encounter the criminal justice system as victims of crime or as people accused of crimes; "Defending and Advocating on Behalf of Individuals with 'Mild' Mental Retardation in the Criminal Justice System" (William M. Edwards and Leigh Ann Reynolds); "The Expert Witness: Issues of Competence, Criminal Justice, and Mental Retardation" (Denis W. Keyes); "The Bewildering Life of Richard Lapointe" (Robert Perske), which details the story of a man with disabilities accused of murdering a grandmother; "Challenging Stereotypes and Ignorance: The San Francisco Police Department" (Forrest Fulton); "Being There: The Role of Advocates" (Dolores Norley); "Communicating with People Who Have Cognitive Disabilities" (Mary F. Hayden), which discusses factors that need to be considered in communicating with people with cognitive disabilities within the context of the justice system; "Pueblo DD/MH Consortium Diversionary Program" (Larry Velasco); and "The Education of Juveniles in the Criminal

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Justice System: A Mandate?" (Barbara E. Ransom and John Chimarusti). A list of relevant additional resources is provided. (Most articles contain references.) (CR)

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# Impact

**Feature Issue on Persons with  
Developmental Disabilities and  
the Justice System**

Published by the Institute on Community Integration (UAP) - Research and Training Center on Community Living

Volume 10 • Number 2 • Summer 1997

## ***The Invisible Victims***

by Daniel D. Sorensen

People with developmental and other severe disabilities suffer violent crime at an alarming rate. Yet there is very little written or, more importantly, done about it. This is not an abstract problem of trends and statistics, but a brutal reality in the lives of the human beings who are victims of these crimes.

Five women whom I knew, all with intellectual disabilities and in their late 20s and early 30s, lived in a licensed, small family home in a rural town. They were solid citizens, dependable, productive workers, and kind, considerate human beings. And they were all systematically and repeatedly raped and terrorized by the owner of the facility over a 5-year period. When one of these women finally found the courage and opportunity to report these crimes, the District Attorney (DA) refused to prosecute. It was only after the licensing authority secured the testimony of the other women and took the matter to a licensing revocation hearing that the DA agreed to prosecute.

A happy, well-adjusted, shy man in his 30s lived in a small family home. I met with him on occasion and got to know him. He loved taking long walks through the countryside. He had an intellectual disability and limited physical dexterity. He often complained that the woman whose house he lived in did not feed him enough and that she was always trying to save money on the food bill. He died from mushroom poisoning when the care provider collected and served wild mushrooms to him for dinner, apparently to save money. No arrest was made.

A friend of mine told me of a woman with a major mental disorder who lived alone in her own apartment. Her condition worsened until she was unable to care for or protect herself. First one man then others noticed her vulnerability and forced their way into her apartment and raped her. No arrests were made in this case.

The stories of crime victims with developmental and other severe disabilities are powerful and usually do not end with the arrest or prosecution of perpetrators. But are they isolated events, a "fair share" of violent crime reported so widely in our society, or are they part of a pattern of substantially higher rates of violent crime against a more vulnerable population?

In study after study, rates of violent crime against people with developmental or other severe disabilities are found to be 4 to 10 or more times higher than the rate against the general population. The rate of sexual assault is particularly chilling. One study found that 83% of women and 32% of men with developmental disabilities in their sample had been sexually assaulted (Hard, 1986). Other studies have found from 86% to 91% of women in their samples had been sexually assaulted. Another study found that of those who were sexually assaulted, 50% had been assaulted 10 or more times (Sobsey & Doe, 1991). These rates compare with 13% for sexual assault for women in the general population.

These dramatically higher rates of sexual assault are consistent with the experience of a clinical psychologist who treats victims with developmental disabilities. She reports that she must not only help the victim deal with the latest sexual assault, but must also help her become better able to deal with the probability of future assault. And it is not just sexual assault that occurs more frequently. Another study found that people with intellectual disabilities were robbed 12.8 times more often than people

[Sorensen, continued on page 26]



*If individuals with disabilities such as Richard Lapointe become involved with the justice system, questions often arise about the system's ability to treat them justly. See story on page 16.*

## ***From the Editors***

*When persons with developmental disabilities become victims of crimes or are accused of committing crimes, they face a legal system that is often unprepared to take into consideration their unique needs. As a result, questions of fairness and equal access have been raised in a number of cases. This issue of IMPACT represents the growing collaboration between the justice system and the disabilities field in seeking to address those questions and ensure that rights are protected and reasonable accommodations are made.*

## ***What's Inside***

*Overview of Issues  
Strategies & Profiles  
Resources*

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# The ADA in the Justice System

by Frank Laski and Kirsten Keefe

The Americans with Disabilities Act (ADA) – the most comprehensive civil rights law ever enacted – has made substantial impacts upon every aspect of our social processes. Yet, seven years after enactment, its effective application to our justice system remains in doubt. It is clear that Congress intended to ensure equal protection under the law for individuals with disabilities by removing barriers that prevent their effective participation in all aspects of citizenship, including the justice system. Title II, Part A of the ADA states that “no otherwise qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or subjected to discrimination by any such entity.” “Public entity” encompasses all police, probation and law enforcement agencies; correctional facilities; and state and local court systems. Yet, many questions relating to accommodating people with mental and physical disabilities have yet to be answered.

The following briefly discusses the current application of the ADA in the justice system to prevent discrimination against people with disabilities.

## Law Enforcement Agencies

The ADA provision calling for “reasonable accommodation” has been interpreted by the Congress and U.S. Department of Justice to require training for police so that they recognize disabilities, respond appropriately, and provide services to persons with disabilities in a non-discriminatory manner. Examples of police officers mistaking individuals with disabilities to be public offenders abound. In *Jackson v. Inhabitants of the Town of Sanford* (1994) a police officer mistakenly perceived Roland Jackson to be operating a motor vehicle while under the influence of alcohol or drugs. In fact, Jackson suffered physical disabili-

ties as a result of a stroke. He asserted the Town violated the ADA by failing to properly train its police officers regarding disabilities. The court allowed Jackson to sue for unlawful arrest, use of excessive force, and unlawful detention.

In a recent Pennsylvania case, two police officers threw to the ground and handcuffed John Washington in front of his house, mistakenly thinking him to be a “peeping Tom.” Washington is an 18-year-old young man who has autism and lives with his mother. He frequently walks back and forth on the sidewalk outside their home. As a result of his encounter with the police, Washington suffered a separated shoulder and was traumatized by the incident. It was apparent from the court testimony that neither of the two officers properly identified Washington as an individual with a disability, even after they were in close contact with him. Both officers described John’s conduct by using terms such as “not normal,” “odd,” “very strange,” and “peculiar,” highlighting the fact that if properly trained, the officers would have been likely to recognize him as an individual with a disability.

Congressional reports indicate that Congress contemplated and recognized that the ADA requires police training. The *Jackson* Court quoted the House Judiciary Committee, which stated:

In order to comply with the non-discrimination mandate, it is often necessary to provide training to public employees about disabilities. For example, persons who have epilepsy, and a variety of other disabilities, are frequently inappropriately arrested and jailed because police officers have not received proper training in the recognition of and aid of seizures. Such discriminatory treatment based on disability can be avoided by proper training (H.R.Rep. No. 101-485(III), 1990).

During Congressional debates on the ADA, representatives explicitly stated that “it is not rare for persons with disabilities to be mistreated by the police.” Furthermore, it was acknowledged that mistreatment may be due to “persistent myths and stereotypes” regarding

*Congress intended to ensure equal protection under the law for individuals with disabilities by removing barriers that prevent their effective participation in all aspects of citizenship.*

people with disabilities, as well as “due to mistaken conclusions drawn by the police officer witnessing a disabled person’s behavior.”

The court in *Sanford* found that Jackson’s situation was of the kind anticipated by Congress when it passed the ADA. Likewise, John Washington’s behavior, typical of an individual with autism, was of the kind Congress intended to protect. The House stated that these mistakes are “avoidable and should be considered illegal under the Americans with Disabilities Act.” Moreover, the House stated such mistakes “constitute discrimination, as surely as forbidding entrance to a store or restaurant is discrimination.”

As a matter of public policy, police officers should be trained to recognize when someone has a disability and how to address, communicate with, and work with individuals with disabilities. A special component can be added to

the training police officers receive prior to certification and as part of their in-service training. Any administrative or fiscal inconveniences to the department are insignificant compared to the consequences when civil rights are abridged.

### **Detention and Correctional Facilities**

Congress expressly stated that the ADA covers state governments and "any" or "all" of the operations therein. Some courts have found this language clear and have applied the ADA to prison facilities in certain circumstances; other courts, however, reject this view and refuse to apply the ADA to correctional facilities absent more specific language (Robbins, 1996).

Generally, courts have held that Title I of the ADA, the provision covering employment rights, is inapplicable to incarcerated persons in the prison setting. The reasoning is that other federal employment statutes, such as Title VII and the National Labor Relations Act, do not apply to prison inmates.

However, more often than not, courts have found that Title II of the ADA, the provision covering public accommodations, *does* apply to prison settings. In *Inmates of the Allegheny County Jail v. Wecht* (1983) the Third Circuit Court of Appeals found that a consent decree that excluded mentally ill inmates with past histories of violence from services provided to other inmates violated Section 504 of the Rehabilitation Act and the ADA. More recently, the Ninth Circuit held that a hearing impaired inmate had a legal right under the ADA to a qualified interpreter (*Duffy v. Riveland*, 1996). Several district courts have agreed with these decisions. The Seventh Circuit District Court has consistently held that an outright refusal by a prison to accommodate an individual covered under ADA is a violation of that individual's rights (*Love v. McBride*, 1995). The Eleventh Circuit required city jail cells to be readily accessible for prisoners with disabilities (*Outlaw v. City of Dothan*, 1993). The Fourth Circuit, however, held that state officials could claim

qualified immunity from suit under the ADA and the Rehabilitation Act on the grounds that they should not have expected the Act to apply to prison inmates (*Toracasio v. Murray*, 1995). Likewise, the Indiana District Court held that the ADA does not apply to state prisons, denying a legally blind prisoner's petition to be accommodated so that he could gain access to services available to other prisoners (*Crawford v. Indiana Department of Corrections*, 1996). The court reasoned that applying the ADA to state prisons, "a core state function," would disturb the balance of power between the states and the federal government. Congress must therefore be "unmistakably clear" and "manifest" if it wants to make the ADA applicable to state prisons. The Ninth Circuit found that the ADA does not apply to state prisons when a prison regulation impinges on inmates' constitutional rights if that regulation is reasonably related to legitimate penological interest (*Fowler v. Gomez*, 1995). Even in the face of clear constitutional violations courts have traditionally taken a "hands off" approach to prison administration.

In time, it should become clear that Title II of the ADA applies to detention and correctional facilities. Prisons must take at least minimal steps to provide accommodations for inmates with disabilities. Physical barriers should be removed to allow all inmates equal access to facilities and services, especially the most basic of services such as shower and bathroom facilities. Educational, vocational, and rehabilitation programs need to be redesigned to ensure equal access to all people. Regulations which are not in compliance with the ADA because they are "reasonably related to legitimate penological interests" must still be scrutinized so that they provide equal protection for all inmates.

### **The Court System**

Courts are required, under the ADA, to meet the accessibility needs of all individuals with disabilities, including judges, employees, lawyers, plaintiffs,

victims, defendants, witnesses, jurors, and observers. Courts must be readily accessible to and usable by the general population. In addition, courts must make specific reasonable accommodations for individuals with disabilities when requested.

Removing physical barriers, or making buildings "facility accessible," is an important first step towards ADA compliance. Architectural barriers must be removed to allow individuals who use wheelchairs full access to the courts. Equipment may be redesigned or added, such as furnishing telecommunications devices for individuals who are deaf. Additional steps may be taken, such as providing personal assistants or scheduling hearings at more accessible sites. Furthermore, courts must provide aids and services to facilitate understanding and communication for all persons. The individual with the disability has the right to request the type of accommodation they prefer. The court is obligated to provide such accommodation unless it can show that an alternative, equally effective means of communication is available. Courts are excused from providing an accommodation only when it will fundamentally alter the activity or structure, or when it presents an undue financial burden (*Land & Water* 1994).

Regarding jury service and persons with disabilities, exclusion of potential jurors based on a disability, primarily through the use of the peremptory challenge, is a violation of the ADA absent a compelling state interest. In *Batson v. Kentucky* (1986), the Supreme Court stated that "competence to serve as a juror ultimately depends on an assessment of individual qualifications and ability impartially to consider evidence presented at a trial." In *People v. Guzman* (1990) the New York Court of Appeals found a person who was hearing impaired competent to "understand all of the evidence presented, evaluate that evidence in a rational manner, communicate effectively with the other jurors during deliberations, and comprehend the applicable legal principles, as

[Laski, continued on page 26]



## ***ABA Mental Health Standards: The Impact on Persons with Developmental Disabilities***

by B.J. George

The American Bar Association's (ABA) *Standards for Criminal Justice* have been adopted and revised over the past two decades as guides for courts, legislators, and rule-makers in modernizing criminal procedure and evidence. The impact of the standards has been substantial, particularly on federal and state appellate courts. Unfortunately, the present decade has not been receptive to statutory reform, so only a few states have re-lected the standards in their statutes.

Within the standards, the chapter *Criminal Justice Mental Health Standards* addresses many of the problems that persons with developmental disabilities might encounter within the criminal justice system. Below is a summary of those standards.

### ***Police Emergency Detention***

The ABA standards urge that persons with mental retardation should not be taken into emergency custody by the police unless their conduct represents a danger to themselves or others, or they appear to be so gravely disabled that they are unable to provide themselves with the basic necessities of life [Standard 7-2.1(a)]. Detention ought to be solely for the purpose of providing transportation to an appropriate mental health, mental retardation or medical facility, where a detainee can be examined and, if appropriate, provided appropriate evaluation, treatment or habilitation [Standard 7-2.1(b)]. If possible, police guidelines should allow for voluntary dispositions in such cases; those may be accomplished through a person's friends or relatives, or by referral to a community mental retardation or other appropriate facility [Standard 7-2.3]. If physical force must be used, it should be the minimum necessary to protect the person with a disability; where feasible, police should seek assistance from persons

with special mental health or mental retardation training in effectuating emergency detention [Standard 7-2.4].

If a person with a developmental disability has been arrested for a crime, and police have reasonable grounds to believe the arrestee meets the criteria for emergency detention on mental health grounds, they should arrange for a mental health or mental retardation professional to provide evaluation, treatment or habilitation; the underlying facts should be transmitted promptly to the prosecutor or court [Standard 7-2.5]. Criminal justice personnel who observe a detainee's conduct or demeanor as indicating mental abnormality, or reflecting self-injurious or suicidal conduct, must report their observations promptly to the official in charge of a detention or holding facility; that official, after confirming the need for action, must summon a mental health or mental retardation professional to provide emergency evaluation, treatment or habilitation [Standard 7-2.6(b)].

### ***Competence to Stand Trial***

Under the Constitution, due process of law is denied if mentally incompetent persons are forced to undergo trial; the *ABA Mental Health Standards* restate that principle [Standard 7-4.1(a)]. The constitutional criteria for competence are a defendant's sufficient present ability to consult with counsel with a reasonable degree of rational understanding and otherwise to assist in her or his defense, and a rational as well as a factual understanding of the proceedings. Incompetence may stem from many causes including mental retardation or other developmental disability [see Standard 7-4.1(a), (b)]. If the issue of trial competence has been raised, a court in which criminal charges are pending should order professional evaluations of the defendant and conduct a formal hearing on the matter

[Standards 7-4.8, 7-4.9]. The court should order treatment or habilitation for a defendant found to be incompetent [Standard 7-4.9(b)], although the defendant has the right either to receive treatment or habilitation or to refuse it [Standard 7-4.10]. If a defendant is permanently in-

***The ABA Criminal Justice Mental Health Standards address many problems that persons with disabilities might encounter within the criminal justice system.***

competent to undergo trial, he or she should be released from the special commitment based on procedural incompetence and be dealt with under ordinary mental health civil commitment statutes, if appropriate [Standard 7-4.13].

### ***Nonresponsibility for Charged Crimes***

The so-called "insanity defense," in various forms, has been recognized for centuries in Anglo-American criminal law. The *ABA Mental Health Standards*, using the label of "mental nonresponsibility," advance as the desirable test whether, "at the time of [charged criminal] conduct, and as a result of mental disease or defect, the person was unable to appreciate the wrongfulness of [the] conduct" [Standard 7-6.1(a)]. Mental retardation is comprehended within the term "mental disease or defect" if it substantially affected the mental or emotional processes of the defendant at the time of the alleged of-

fense [Standard 7-6.1(b)]. In fact, in recent years a number of legislatures, including Congress, have adopted statutory definitions of mental nonresponsibility (insanity) closely resembling the ABA standards definition.

Assessment of a defense claim of mental nonresponsibility is a trial jury's responsibility; the *ABA Mental Health Standards* set forth detailed provisions as to how evidence is to be prepared and presented on the nonresponsibility issue. If a defendant is found not guilty by reason of mental nonresponsibility (insanity) (NGRI) [Standard 7-6.10], the standards urge the establishment of special commitment proceedings to determine whether the acquittee should be committed to a mental health or mental retardation treatment facility [Standard 7-7.3]. Commitment should not be ordered unless a court finds that an acquittee currently has a mental illness or mental retardation and, as a result, poses a substantial risk of serious bodily harm to others [Standard 7-7.4(b)]. The ABA standards recommend that mental health commitment following NGRI should not exceed the maximum period of incarceration authorized for the offense(s) of which a defendant has been acquitted; prolonged commitment beyond that time should require a new regular mental-health civil commitment order after proper proceedings [Standard 7-7.7(a)]. Special commitment orders should be reviewed periodically by the committing court [Standard 7-7.8], and should be terminated at any time if the acquittee no longer is dangerous [Standard 7-7.9].

### **Convicted Defendants with Developmental Disabilities**

Some persons with developmental disabilities will be competent to undergo trial and will be convictable of their offenses. The *ABA Mental Health Standards* advocate the adoption of special standards governing the sentencing and disposition of offenders with severe mental illness or serious mental retardation; the latter is defined as a person "with very significant subaverage general intellectual

functioning existing concurrently with substantial deficits in adaptive behavior" [Standard 7-9.1(c)]. Convicted offenders should not be denied probation solely because they require mental health or mental retardation treatment or habilitation [Standard 7-9.2]. Moreover, such a condition should be considered a possible mitigating factor in sentencing [Standard 7-9.3]. If defendants with severe mental illness or retardation are sentenced, it should be to a mental health or mental retardation facility; if a condition is less severe, an adult correctional facility should make available needed treatment or habilitation [Standard 7-9.7]. Prisoners committed to a mental health or mental retardation treatment facility should not be releasable by mental health or retardation officials without an advance authorization from either a correctional official or the sentencing court [Standard 7-9.11]. The right of offenders placed in mental health or mental retardation facilities to decline habilitation or mental health treatment is recognized to the same degree that civilly-committed patients have it [Standard 7-9.12].

If an offender with severe mental illness or mental retardation is still in mental health custody at the expiration of the underlying criminal sentence, he or she should either be released or civilly committed on the basis of separate judicial proceedings [Standard 7-9.16]; this restates federal constitutional requirements.

### **Prisoners with Developmental Disabilities**

It is possible for persons with mental retardation to be convicted and sentenced to correctional institutions; that will be true in the overwhelming majority of American jurisdictions that have not adopted the special sentencing and commitment procedures recommended in Part IX of the *ABA Mental Health Standards*. In such cases, the correctional system should provide an appropriate array of mental retardation services and habilitation [Standard 7-10.2]. Voluntary

transfers [Standard 7-10.3] or court-authorized transfers [Standards 7-10.4 – 7-10.7] should be possible to treatment or habilitation facilities operated by a state department of mental health services. Prisoners so transferred should have the same right as civilly-committed patients to refuse treatment or habilitation [Standard 7-10.10]. When treatment or habilitation no longer is necessary or appropriate, the prisoner should be returned to correctional custody after appropriate administrative review [Standard 7-10.11]. A committed prisoner with mental retardation must either be discharged or civilly committed in a separate proceeding at the expiration of the underlying criminal sentence [Standard 7-10.12].

### **Impact of the Standards**

As noted at the beginning of this article, implementation of the *ABA Mental Health Standards* turns on the willingness of state lawmakers to pattern legislation after them, and few have done so. Consequently, no statistical evaluation of the standards' effectiveness is possible. However, it is hoped that the rights of persons, including persons with developmental disabilities, are enhanced through the use by courts, lawyers, and mental health professionals of the standards as a guide or reference text. In short, the system can function appreciably better with the standards than without them.

*B.J. George is Professor of Law Emeritus at New York Law School, former General Reporter of the ABA Criminal Justice Mental Health Standards, and a former chairperson of the ABA Section of Criminal Justice. Copies of the ABA Criminal Justice Mental Health Standards (2d ed. 1986, 1989) can be obtained by writing to the American Bar Association, Publication Orders, P.O. Box 10892, Chicago, Illinois 60610-0892, or by calling 312/988-5522. Please reference Publication #5090041.*

## Equal Protection of the Law for Crime Victims with Developmental Disabilities

by Dick Sobsey

Civil rights consist of two essential parts: equal protection and due process. Equal protection of the law is a fundamental principle of justice in every modern democracy. In the United States, the promise of equal protection of the law was made to every citizen with the ratification of 14th Amendment to the Constitution in 1868. It says that no state may "deny to any person within its jurisdiction the equal protection of the laws." The importance of this simple statement is unquestionable, and many of its vast implications go far beyond the scope of this article. But, in regard to crime victimization, its meaning is clear. Efforts to deter and prevent crime must attempt to protect all citizens to an equal extent. A crime committed against any citizen must be investigated and prosecuted as vigorously as it would be if the crime were committed against any other. Sentencing of offenders must be based on the seriousness of their crimes and not the status of their victims.

Sadly, the promise of equal protection of the law has never been fully achieved for all citizens, and no group of citizens has been more consistently deprived of equal protection than people with developmental disabilities. Thirteen decades after the ratification of the 14th Amendment, people with developmental disabilities are among the most frequent victims of crime, and remain severely disadvantaged by the justice system that is designed to protect them.

Since the 1960s, research has repeatedly established that children with all kinds of disabilities, but particularly developmental disabilities, are much more likely to be abused than other children. This increased risk exists for physical and sexual abuse, and neglect (Sobsey, 1994). While the risk of abuse is only slightly higher for young children with disabilities, it continues to increase throughout childhood, and the risk of

abuse appears to be more than three times higher for adolescents with disabilities than for other adolescents. There has been less research on the relative risk of violence for adults with disabilities, but the research available to date suggests that the risk of being physically or sexually assaulted for adults with developmental disabilities is likely 4 to 10 times as high as it is for other adults.

Statistics, however, do not tell the human stories, many of which are hard to hear. For instance, in February of 1997, a parent-advocacy group offered a \$15,000 reward for the arrest and prosecution of a suspect in the rape of a woman with severe developmental disabilities in a state-run institution. They offered the reward after the state issued a report indicating that the rape may have been committed by a staff member and that there were dozens of suspicious injuries in the same building, but offering no solution to these problems. In March, 1997, courts in Massachusetts heard that one of six people who beat, scalped, and raped a 22-year-old man for three months before killing him told police that torturing him with electric shocks "looked like fun." As that trial proceeded, the media also carried news from another investigation of two men with developmental disabilities who were kept chained in the backyard by their caregivers, were forced to eat dog food, had teeth pulled out with pliers, and had boiling water poured on them. The rape, torture, and murder of vulnerable people is an outrage, and punishment for such offenses should be swift and severe. Unfortunately, it is sometimes nonexistent and often lenient.

Several things can stand in the way of equal justice. In many caregiving settings, internal administrative investigations take the place of or interfere with the criminal justice system. In other

words, what might constitute an assault and battery and be treated as a police matter in the community, is frequently called "abuse" and treated as a personnel matter in institutions.

In many cases, prosecutors fail to bring cases to court because they fear that witnesses with disabilities will be excluded or disbelieved. While it is true that some people with developmental disabilities have profound impairment of memory or communication, many others who could provide accurate testimony are denied the opportunity to give evidence because of their disabilities. Police, in turn, are often reluctant to investigate these cases because they do not think that they can be successfully prosecuted. People with disabilities and their advocates often do not report violence to the police because they lack confidence that their complaint will be acted upon. In a study of more than 300 cases of sexual abuse and assault conducted by the University of Alberta, we found some evidence of the system breaking down at every level, but more frequently the cases were simply never reported. As a result, the negative expectations at every stage are self-fulfilling. The justice system fails because everyone believes that it will fail. The police cannot investigate and the prosecutor cannot prosecute until people with disabilities and their advocates report the crimes that are committed against them. In our sample, when cases were reported, investigated, and prosecuted, about one-third resulted in convictions.

Some cases suggest that even when convictions occur, crimes against people with disabilities result in lesser penalties. In recent cases, an American mother received a sentence of 240 hours community service for killing her daughter who had a brain injury, and a French mother was only sentenced to probation for killing her daughter who had autism.



In an earlier Canadian case, only one of four young men who beat a young man with a cognitive disability to death received any jail time. When a Canadian father was sentenced to a minimum term of 10 years for killing his daughter with multiple disabilities, there was widespread public outrage because he was sentenced too severely. Although this was the minimum sentence allowed by law for second-degree murder, and many of the facts of the case suggested the possibility of conviction for first-degree (planned and deliberate) murder which carries a minimum sentence of 25 years, the Canadian Senate responded proposing a bill that would create a special category of third-degree murder that would allow "Compassionate Homicide" or mercy killing in such cases.

While the stated purpose of such legislation is to consider the intent of compassion, there are two serious problems. First, no one proposing such legislation has proposed it be extended to compassion for anything other than illness or disability of the person murdered. If compassion for people who live in poverty, who lose loved ones, who are discriminated against, who simply are not satisfied with their lives does not justify murder, why should "compassion" for people who live with a disability justify the same act? Second, since intent can never be objectively measured, the mere claim of the intent of compassion would be impossible to refute beyond any reasonable doubt. The effect would be the creation of a law that makes killing people with disabilities a less serious crime than killing other citizens.

To test the hypothesis that it is disability rather than the notion of compassion that makes a crime less serious in some people's minds, we conducted some simple research. We gave 84 law students short vignettes describing a severe physical assault that took place at work and asked them what sentence would be appropriate upon conviction. Two versions of the vignette differed only in the description of the victim. In one, the victim was described as "a 26-year-old man who has been moderately

mentally handicapped from birth." In the other, the victim was described as "a 26-year-old professional." The results of the two studies were significantly different. Eight times as many people thought a suspended sentence was adequate when the crime victim was described as having a developmental disability, and almost twice as many people felt that time in jail should be required when the victim was described without a disability. In addition, when jail time was recommended, the average sentence was shorter for the crime when it was committed against a victim with a disability.

While this picture is bleak, it is far from hopeless. Much can be done to improve the situation and much important work is already in progress. The goal is clear: Crime victims with disabilities must have equal access to and equitable treatment in the criminal justice system. How can this be achieved? Part of the answer lies in community inclusion and community-based law enforcement, and in appropriate counseling and support.

While most of the evidence suggests that people with developmental disabilities are more likely to be victimized in institutional than community settings, community inclusion in itself is not enough to protect people from violence. As more people with developmental disabilities remain in or return to our communities, community-based law enforcement must prepare to meet their needs. Fortunately, community-based policing has emerged as a valued tool in fighting crime during the 1980s and 1990s, linking police agencies more closely with the communities they serve. Establishing positive links between police and people with developmental disabilities prior to the development of crimes can be an excellent deterrent to crime, and help ensure that police are prepared to act if a crime should occur. For example, people with developmental disabilities can often play valuable roles in neighborhood watch and other similar programs.

When people with developmental disabilities do become victims of violence, the same emotional responses occur that would be expected in other vic-

tims of violence and the same kinds of help are often required. Unfortunately, counselling and victims' assistance programs often exclude them or are unable to accommodate their special needs. This is especially unfortunate because people with developmental disabilities often lack the informal support networks and the resources required for self-help. Making counseling and support accessible is generally best achieved through interdisciplinary cooperation, maintaining the basic function and procedures of the generic service, and modifying it only to the extent required for inclusion.

We are only beginning to understand the factors that make people with disabilities more vulnerable to crime. We need more research that specifically addresses the experiences of people with developmental disabilities as victims of crime, and we need evaluation of the criminal justice system in relation to addressing the unique needs of people with developmental disabilities. The linking together of people who share the goal of equal justice for people with disabilities is a key factor in successful efforts. People who are already involved with groups advocating for people with disabilities can work to ensure that this issue is on the group's agenda and receives the priority it deserves. And networking between local police, victims' rights groups, and disability organizations can also be an important tool to change attitudes and practices, and ensure equal protection of the law for crime victims with developmental disabilities.

Sobsey, D. (1994). *Violence and abuse in the lives of people with disabilities: The end of silent acceptance*. Baltimore: Paul H. Brookes.

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## ***The Arc: Tackling Criminal Justice Issues at National, State and Local Levels***

*by Leigh Ann Reynolds and Rick Berkobien*

As the nation's largest voluntary organization committed to the welfare of persons with mental retardation, The Arc addresses a wide range of issues including the treatment of persons with disabilities within the criminal justice system. With a national headquarters and approximately 1,100 state and local chapters, The Arc advocates, educates, and informs in relation to legal system issues at each of its three organizational levels.

Locally, chapters of The Arc are often the "first-line of defense" for people with developmental disabilities caught unexpectedly in the criminal justice system. Because most communities lack specialized diversionary programs specifically for offenders with disabilities, a local chapter of The Arc may provide services to "fill in the gap." Families and local service providers may directly contact a local chapter upon the arrest of a family member or individual to obtain general information and to learn how to most effectively advocate on behalf of the person. Having little or no information about developmental disabilities, attorneys may seek advice on what, if any, legal recourse can be made on a client's behalf. In some cases, local chapters that are called upon in situations where a person may be inappropriately detained or accused of a crime have established contacts with local law enforcement agencies and courts. Some local chapters may also operate specialized intervention programs in order to work with the courts in providing diversionary services – not to avoid appropriate punishment, but to prevent unnecessary incarceration. In other cases, local chapters collaborate with their state chapters and even call upon the resources of the national headquarters for assistance. Courts often encounter offenders with developmental disabilities who require intervention, but who, if incarcerated in a regular penal system, may become victimized. Chapters, working in

concert with their local judiciary systems, can help ensure that these individuals receive services, such as residential supports, vocational training or specialized service coordination, giving the individual a better chance for rehabilitation that may be unattainable in another setting.

On a state level, chapters of The Arc are active in the criminal justice arena. State chapters monitor statutes that impact individuals with developmental disabilities and many operate programs or conduct initiatives to protect the legal rights of such individuals. Chapters in New Jersey, New Mexico, and California provide outstanding examples of how The Arc is making an impact.

The Arc of New Jersey operates the Developmentally Disabled Offenders Program (DDOP), one of the few programs nationwide that provides alternatives to incarceration for defendants with developmental disabilities. The program, directed by an attorney with a background in criminal defense law, serves as a clearinghouse for information about offenders with developmental disabilities and acts as a liaison between the criminal justice and human services systems. Quality of care and services is monitored as individuals move from one system to another, and the DDOP continually investigates how linkages between state service systems can be established, strengthened, and maintained to benefit offenders with developmental disabilities.

DDOP, through the use of a Personalized Justice Plan (PJP), offers the court alternatives to incarceration for people with developmental disabilities. PJPs identify community supports and provide least restrictive, community-based alternatives for offenders, while holding them accountable for their actions. The PJP is presented to the court as a special condition of probation or parole. If it is

accepted by the judge and the offender is placed on probation or parole, DDOP then monitors the PJP until the person completes his or her sentence.

Not only does the DDOP provide direct services for people with mental retardation, it provides training and education as well. DDOP provides technical assistance to attorneys who represent people with mental retardation, educates individuals with developmental disabilities about confusing aspects of the criminal justice system, and immediately intervenes on the client's behalf when necessary. With funding from the New Jersey State Bar Foundation, the program recently produced materials for self-advocates to help individuals know what to do if they are ever arrested. They also produced a guide for attorneys that explains the specific disadvantages faced by defendants who have a disability and assists them in identifying someone with mental retardation.

The Arc of New Mexico operates a similar program called The Justice Advocacy Project (JAP). JAP provides advocacy services statewide to adults and juveniles with developmental disabilities who are detained by the police or who are accused or convicted of crimes. They provide individual advocacy and a coordinated system of follow-up or aftercare. JAP also provides systems advocacy by actively supporting legislation that promotes improved treatment, habilitation, and the development of specialized programs for offenders with developmental disabilities. JAP believes education is a key component of its services. People with disabilities are educated about individual rights, rights when arrested, what constitutes illegal behavior, and consequences for breaking the law. Specialized training is also offered to law enforcement, the judiciary, and probation, correctional, and parole officers. Currently, JAP is advocating for a change in

the Criminal Competency Code for persons with mental retardation so that an individual who is being confined, waiting to see if he or she becomes "competent to stand trial," would be capped at one year.

The Arc of California formed the Criminal Justice Task Force for Persons with Developmental Disabilities in 1995 to address the problem of increasing numbers of people with developmental disabilities entering the criminal justice system, and to promote better coordination between criminal justice and mental health/mental retardation agencies. The task force convenes a number of committees that cover a wide array of topics, including victims of crime, incarceration, and community resources. Included on these committees are self-advocates, psychologists, attorneys, and police officers. The goal of the task force is to identify specific problems in California and propose solutions in the form of legislative, policy, and procedural reforms. The task force is currently involved in creating materials for public defenders who have clients with developmental disabilities. Growing interest in these issues has spurred the committee to employ a part-time coordinator to oversee task force initiatives. The Arc of California also recently held a one-day conference which brought together experts in the field of developmental disabilities and criminal justice, demonstrating the need and desire to continue helping individuals in this critical, yet often overlooked, area of advocacy.

Nationally, The Arc has undertaken numerous advocacy and programmatic criminal justice initiatives. Many of these activities stem from the organization's position statement, *Access to Justice and Fair Treatment Under the Criminal Law for People with Mental Retardation*, a statement of belief adopted by The Arc's governance. The Arc's Legal Advocacy and Human Rights Committee – comprised of national experts in human rights – has joined national and state-level amicus curiae briefs in defense of individuals with mental retardation, and advises the organization on

legislation which impacts the legal rights of individuals with mental retardation.

The Arc developed a two-page question/answer fact sheet specifically on this topic to help create an awareness among our members, as well as police officers, judges, attorneys, jailers and others involved in the criminal justice system about the magnitude of the problem.

Programmatically, The Arc has spearheaded national education and training efforts in criminal justice. In 1994, The Arc was awarded a grant from the U.S. Department of Justice to produce educational materials on the Americans with Disabilities Act and its impact on courts and law enforcement agencies, both Title II entities. The Arc developed materials for court personnel, law enforcement agencies, and self-advocates, distributing them throughout the United States. The Department of Justice also included these materials in packets of model materials sent to each law enforcement agency that received Crime Bill monies. Additionally, the project compiled a comprehensive list of materials for courts and police on people with developmental disabilities in the criminal justice system. During its national convention in November, The Arc will present two workshops, one for self-advocates to help them understand how to protect themselves and their rights if they are arrested, and the other for those interested in developing diversionary programs for offenders with mental retardation, like those programs previously mentioned.

As the country's legal system becomes increasingly backlogged, and prison and jail populations continue to swell, organizations such as The Arc – at the national, state and local levels – offer hope and practical solutions for individuals with developmental disabilities who may otherwise get lost in a legal quagmire.

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## Another Ally: NAG

The National Advisory Group for Justice (NAG) is a federally-funded project established to help prevent discrimination against people with developmental disabilities in the criminal justice system, and to educate criminal justice system professionals and people with disabilities about one another. The national organization, Self-Advocates Becoming Empowered, is a key collaborator in NAG, which is housed in the Public Interest Law Center of Philadelphia (PILCOP). The emphasis on self-advocates is seen throughout project activities, which include:

- **Educating self-advocates about the criminal justice system,** how to avoid getting in legal trouble, and what to do if that occurs. In addition, self-advocates, family members, and professional advocates train others about dangers for persons with disabilities in the criminal justice system.
- **Advocating through circles of friends.** Project members participate in the Friends of Richard Lapointe (see story on page 17), learning the effectiveness of this advocacy strategy and how it can be used to support others.
- **Providing legal advocacy for persons with disabilities who are arrested.** Project staff examine cases in which there are violations of the Americans with Disabilities Act and advocate for change, including changes in state legislation, to strengthen protections for persons with disabilities.

NAG is available to assist self-advocates, advocates, and others across the country in addressing problems faced by people with disabilities in the criminal justice system. For more information call Barbara Ransom at PILCOP, 215/627-7100.

NAG is funded by the Administration on Developmental Disabilities, U.S. Department of Health and Human Services.



## Breaking the Cycle: "Justice Now!"

by Jeri Houchins

Both reality and dreams are necessary to address the challenges set out in the Justice Now! project. The reality is that young people and adults with developmental disabilities get caught up in the criminal justice system in disproportionate numbers and fall victim to discrimination. The dream is that the criminal justice and human service systems can come together to break the cycle of involvement and prevent injustice.

People with developmental disabilities often lack information on how to avoid getting involved in the criminal justice system, what to do if they get involved, where to get help, and what to do until help arrives. This is especially true for people with cognitive disabilities. Unknowingly, they often forfeit their rights in varying degrees because of misplaced trust, limited vocabulary, difficulty recalling facts, undue influence of authority figures, and a desire to avoid being labeled "retarded."

The consequences of this dilemma vary depending on the person's involvement in the system. A *witness* without an advocate assistant is often unable to understand the questions being asked so investigative information is lost. Crimes against *victims* often go undiscovered because the victims are afraid that people will blame or be angry at them; in addition, their behavior is often misinterpreted and/or the person is considered an unreliable accuser. *Suspects* with mental retardation often find themselves in a never-ending cycle of involvement in the criminal justice system. Without reasonable accommodations for their disabilities, the result is inappropriate incarceration, a greater rate of parole denial, lack of transition training to prepare them for community re-entry, failure to adjust to post-incarceration life, and, as a consequence, recidivism.

In the fall of 1995, with funding from the Administration on Developmental Disabilities, U.S. Department of Health and Human Services, Justice Now! be-

gan its work of preventing discriminatory treatment of people with developmental disabilities in the criminal justice system. One approach being used by the project is training persons with disabilities and professionals. Through the project's *consumer prevention curriculum*, people living in and transitioning into the community become better equipped to avoid involvement in a crime and protect their rights if they become involved. The curriculum is also used with human service, education, and advocacy professionals in a train-the-trainer approach that prepares them to train others.

The project's *criminal justice training curriculum* equips law enforcement and victim services professionals to better understand, to more quickly identify, and to more appropriately interact with victims, witnesses, or suspects who have cognitive disabilities. This curriculum is offered through inservice for current personnel, through the cadet/academy for trainees, and for mental health deputies, who are specialized sheriff's department personnel called into cases as soon as it is determined that a person with a cognitive disability is involved.

These are just two of the activities of the project. In addition, it has co-developed a jail intake screening instrument now mandatory throughout Texas, is revising law enforcement agency policy and procedure guidelines, is consulting in legislative committee activities, and is providing nationwide training and presentations. By working with self-advocates, human service professionals, and criminal justice professionals, Justice Now! is helping to break the cycle of involvement in the criminal justice system by persons with developmental disabilities and preventing injustice.

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## From a Grateful Mother

Henry, my son, is strong, accident prone, handsome, funny, loving, a TV addict, kind, helpful, healthy, shy, and has special needs. Last fall, one of those special needs was met when he participated in the Justice Now! Prevention Training where he learned what actions could get him in trouble with the law and what he should do if he did get into trouble.

Even though he learned a lot and graduated from the class, Henry somehow managed to be in the right place at the wrong time. He was standing in front of a grocery store, waiting for his sister to pick him up to go home, when he saw two schoolmates breaking into a newspaper stand. Before they were able to get to the money, a police officer drove up and got out to go inside. The boys knew Henry was in special education at school, didn't talk much, and had trouble saying things when he did talk. Scared that the police had noticed the damaged newsstand, the boys walked up to the officer and said, "That kid over there was trying to get money out of that machine!" The officer immediately went over to Henry and asked his name. Henry quickly pulled out his Prevention Graduation Card and loudly replied, "I NEED A LAWYER!" No matter what the officer asked him, he yelled, "I NEED A LAWYER!" Finally, the officer noticed the card in Henry's hand, looked at it and saw the instruction to call me or the local mental health/mental retardation hotline. Seeing this, he realized Henry had special needs and began looking at the situation differently.

In January, Henry testified at the juvenile hearing. Both boys were found guilty of attempted theft and are now doing 200 hours of community service. Prevention Training probably saved Henry from being arrested and even gave him the chance to exercise his rights as a witness.



## Educating for Change: "Equal Justice"

by Lisa Sonneborn

Equal Justice for People with Mental Retardation, a project of the Temple University Institute on Disabilities/University Affiliated Program, was developed to support people with mental retardation who encounter the criminal justice system as victims of crime or as people accused of crimes. The primary focus of the project is to develop and implement training curricula for criminal justice professionals, as well as people with mental retardation and their allies.

The circumstances that led to the Institute's interest in the criminal justice system are, perhaps, as unique as the Equal Justice project. In the spring of 1994, an article written by author and advocate Bob Perske was circulated throughout the Institute. It told the story of Johnny Lee Wilson, a young man with mental retardation who had been imprisoned for the murder of an elderly woman in his hometown of Aurora, Missouri. Johnny confessed to the murder, waived his right to a trial out of fear of the death penalty, and was sentenced to life imprisonment with no possibility of parole. At the core of the Wilson case was Johnny's interrogation by local police and his subsequent confession. Transcripts clearly revealed that Johnny's interrogation was leading and threatening, his confession coerced. Despite the fact that no physical evidence linked Johnny to the heinous crime of which he was accused, the confession alone was grounds enough to make a case against him. Had the actual murderer not confessed to the crime two years later, Johnny would continue to languish in prison. Even with this new evidence, it took another 7 years of advocacy and media attention before Johnny was released. In a move that was particularly courageous given the existing "get tough on crime" climate, Governor Mel Carnahan pardoned Johnny on September 29, 1995.

Johnny's plight deeply affected the Institute staff. After much discussion, it

was decided that the Institute would produce a videotape that would tell Johnny's story. We hoped that the videotape would not only serve to advocate for his release from prison, but would also raise awareness within the disability community about what can and does happen when people with mental retardation come into contact with the criminal justice system. While doing research for the videotape, we learned that across the U.S. an estimated 14,000 individuals with mental retardation are in state and federal prisons, and another 12,500 are in residential facilities for people with mental retardation because they have been convicted or are suspected of committing crimes (Conley, Luckasson, and Bouthilet, 1992).

In 1995, we completed our work on *Unequal Justice: The Case for Johnny Lee Wilson*. The overwhelming response to the videotape from criminal justice professionals, self-advocates, and families and allies of people with disabilities was indicative of the growing need for information and resources about the criminal justice system. The Equal Justice for People with Mental Retardation project was created to address that need.

With the support of the Joseph P. Kennedy, Jr. Foundation, the Equal Justice project began its work in July of 1996. Our affiliation with Temple University provides a unique opportunity to educate the next generation of criminal justice professionals about mental retardation. The project has formed collaborative relationships with Temple's Law School, and with its School Psychology and Criminal Justice programs. Faculty from each of these programs have been designated to infuse our training curricula into existing courses. Eventually, every Temple University student planning a career in criminal justice will leave the university with basic knowledge of how to better protect the due process rights of people with mental retardation.

The project's training curricula for criminal justice professionals will be disseminated nationally in the second and third years of the project through the national University Affiliated Program network. Equal Justice will also infuse its curricula into the professional community through the continuing education credits that are mandatory for lawyers, judges, and psychologists, and will work to have the curricula included in police academy courses throughout the state.

The Equal Justice project will also educate self-advocates and their allies in the community about the criminal justice system. Our curriculum for self-advocates and their allies will cover rights and responsibilities as citizens, as well as issues of personal safety and building safer environments. We also plan to involve self-advocates in train-the-trainer sessions, so that they can assume a leading role in the dissemination of critical information about the justice system.

As we have just completed the first year of our 3-year project, it is too early to predict the outcomes of our work. However, the ever-growing list of calls received from people with mental retardation who have been arrested or victimized is a constant reminder that there is much work to be done. There are certainly moments when working towards change within the criminal justice system seems an overwhelming task. In such moments I recall the image of Johnny Wilson on September 29, 1995, as he walked freely out of prison, and into the arms of his family.

Conley, R.W., Luckasson, R., & Bouthilet, G. (1992). *The criminal justice system and mental retardation: Defendants and victims*. Baltimore: Paul H. Brookes.

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## ***Defending and Advocating on Behalf of Individuals with "Mild" Mental Retardation in the Criminal Justice System***

by William J. Edwards and Leigh Ann Reynolds

People with mild\* mental retardation pose significant challenges to attorneys and advocates who are given the difficult responsibility of defending (or assisting in the defense of) someone with this disability. Very often, the disability is not recognized unless a person's behavior or appearance makes it apparent. Attorneys need to be aware of the fact that

***Without appropriate identification and explanation, mild mental retardation can become a liability, a sometimes deadly liability, within the criminal justice system.***

approximately 89% of all people with mental retardation are mildly affected (Ellis & Luckasson, 1985) and not easily recognizable as having a disability. In addition, individuals frequently do not want their disability to be "found out" for fear of being labeled as "retarded." Such stigmatization often makes the individual feel less accepted by others, especially those in positions of authority, such as attorneys, police officers, and court personnel (The Arc, 1995). Attorneys and advocates need the skills and knowledge to identify a defendant with mental retardation and to educate others about the significance of this disability, at whatever level of the disability.

As a deputy public defender and an advocate who have worked on capital cases involving defendants with "mild" mental retardation, we have seen how people with mild mental retardation are

systematically overlooked by attorneys and others in the criminal justice system. Here we offer suggestions as to how attorneys and advocates can attempt to use adaptive behavior (skills) and IQ testing to determine whether or not a person has mental retardation.

Mental retardation has a profound impact on a person's life and capabilities. Even the least obvious forms of mental retardation constitute a severe disability for the individual (Ellis & Luckasson, 1985). Although some people who have mental retardation can learn and process information, they may be able to do so only at minimum levels. A common example of this is demonstrated in a defendant's inability to understand the Miranda rights. Many people with mental retardation simply cannot understand their rights when arrested, especially in the form often given or read by police. They are unable to understand the term "waiver" or even the elements of the charged offense without having this information explained in great detail. Comprehension is further impaired because of the individual's limited vocabulary (Simpson, 1994).

Due to these communication and intellectual limitations, mental retardation can be especially problematic and highly volatile in criminal justice situations, demanding the careful attention of lawyers and the entire legal system. Without its appropriate identification and thorough explanation, mild mental retardation becomes a liability (and sometimes a deadly one) within the criminal justice system. For example, in a recent federal death penalty case in Texas, a jury sentenced a 23-year-old male with "mild" mental retardation ("Frank") to death for the repeated rape and murder of a 16-year-old girl. He was one of five co-defendants implicated in the horrific crime, and was the only one who was suspected of having mental retardation.

His attorneys suspected mental retardation due to his poor communication skills and inability to provide meaningful information to assist counsel. Attorneys sought assistance from local advocates and nationally-known experts knowledgeable about mental retardation/criminal justice issues because they had an extremely difficult time finding documentation to verify his disability.

One strategy used to determine whether or not Frank had mental retardation was by measuring his adaptive skills. Adaptive skills are those skills that are needed in order to live, work and play in the community. They are divided into 10 specific skill areas: communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics, community use and work (AAMR, 1992). Expert testimony on Frank's adaptive behavior testing revealed that he was deficient in several adaptive areas. Interviews with family members and friends revealed that he was unable to drive very far away from home without becoming lost and that he had to cheat on his driving test in order to obtain a driver's license.

Frank's school records, which should have revealed any history of special education classes, were examined in the attempt to document the presence of mental retardation in childhood. In school records, people with mental retardation may be referred to as "educable," a term traditionally used to describe the person's educational category. If the individual was placed in special education, school records may refer to him or her as "educationally mentally handicapped" or as having "educable mental retardation." Frank's siblings were all placed in special education classes; however, his education records did not show him ever being placed in special education classes, although his grades were very low (mostly Ds and Fs).

Past psychological evaluations and birth records that may indicate complications at birth are also needed. While hereditary factors are an etiological consideration, the attorney should look into the defendant's history of health care

***Attorneys need to be aware of the fact that approximately 89% of all people with mental retardation are mildly affected and are not easily recognizable as having a disability.***

and consider other factors, such as poor environmental stimulation, that may have contributed to the presence of mental retardation. A disproportionate number of people identified as mildly retarded are from lower socioeconomic status families, which was true in Frank's case (Patton, Smith & Payne, 1990). Also, Frank's mother had been diagnosed with mental retardation. Recent research suggests that maternal mental retardation, combined with poverty, can have detrimental effects on the development of children, especially boys (Feldman & Walton-Allen, 1997).

Although psychological testing consistently revealed his IQ in the range of mental retardation, only four jurors believed that Frank had mental retardation. Out of those four, none felt that his mental retardation should have any bearing on whether or not the death penalty should be imposed. Consequently, he was sentenced to death and is now in a federal prison awaiting an appeal on his case. Frank's case provides a chilling example of how difficult it can be to defend the life of someone affected by mental retardation. It is often hard to

"prove" to a judge and/or jury the presence of mental retardation, especially since the cause of most cases of "mild" mental retardation is unknown.

Another case of an individual with mental retardation in California provides yet another example of how mild mental retardation is often minimized and misunderstood by the court system. Like Frank, this individual also showed deficits in adaptive skills. Although he did not appear to have mental retardation (he independently rode the bus, served briefly in the National Guard and even worked as a nurse's assistant), he was diagnosed by a psychologist as having mental retardation. Mental retardation was first suspected when it became evident that he could not write or even remember his own phone number or mother's address without writing it down. His memory functions were far below adult expectation levels. Further review of his social history found that he would get lost while walking and was AWOL over nine times while in the military. He also was unable to hold a job for more than a few months. He relied on his wife to purchase groceries, do daily chores, and handle the family finances. His wife even assisted him in filling out job applications when he was looking for employment.

People with mental retardation, like the defendant just mentioned, show poor ability to use logical reasoning and abstract thinking. Documenting the defendant's adaptive deficits throughout his life was an important factor in later convincing the district attorney to stop seeking the death penalty. The district attorney believed that this person functioned on a higher level than he actually did, which is not an uncommon belief held by those who mistakenly underestimate the affects of "mild" mental retardation.

The district attorney believed the defendant did not have mental retardation based on the evidence that he could ride the bus like most adults, was enlisted in the military, and was "licensed" as a nursing assistant. What the district attorney never realized, however, was that

throughout his life the individual had become quite adept in making others believe he understood more than he really did. He feared the rejection of others, of being called stupid and of being labeled "mentally retarded" if the truth of his disability was ever uncovered.

Demonstrating that a person with mental retardation has a disability is only the first step in ensuring fair treatment within the legal system. Attorneys, advocates, and others concerned for the welfare of such individuals must be prepared to explain to those in the legal system, who are generally unfamiliar with mental retardation, that people who have "mild" mental retardation and appear to be unaffected by their disability are, in fact, significantly impaired. This truth is especially important in criminal justice situations where the rights of a defendant with mental retardation may be easily and unwittingly violated due to his or her inability to fully appreciate the meaning of basic, but critical, legal concepts.

\*The term "mild" is used here to describe an IQ of 55 to 70. It is often misleading because it implies that those with mild mental retardation have a less significant disability than someone more severely affected by mental retardation. However, mental retardation (regardless of the level of severity) has a profound impact on an individual's life, and can be especially troublesome when such individuals become involved in the criminal justice system.

American Association on Mental Retardation (1992). *Mental retardation definition, classification and systems of supports* (9th edition). Washington, DC: Author.

The Arc. (1995). *People with mental retardation in the criminal justice system. Q&A*. Arlington, TX: Author.

Ellis, J. & Luckasson, R. (1985). Mentally retarded criminal defendants. *George Washington Law Review*, 53 (3-4), 414-493.

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Patton, J., Smith, H. & Payne, J. (1990). *Mental Retardation*. New York: Merrill.

Simpson, S. (1994). Confessions and the mentally retarded capital defendant: Cheating to lose. *Capital Defense Digest*, 6(2).

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## The Expert Witness: Issues of Competence, Criminal Justice, and Mental Retardation

by Denis W. Keyes

People finding themselves caught up in the criminal justice system for the first time will most often feel confused, alone, and frightened. To some extent, this should be expected: A major purpose of the system's unpleasant nature is to deter citizens from committing crimes through the fear of reprisal. However, when people with mental re-

readily act as advocates to assist in a brief assessment to determine if an alleged offender or witness may be suspected of having mental retardation. It is for events such as this that obtaining the services of a qualified expert in *mental retardation* – not mental health and not psychiatry – can be of crucial importance. While a psychologist (preferably an educational or school psychologist) is necessary for an actual diagnosis of mental retardation, an expert in mental retardation can often make the difference between a confused jury and an enlightened court.

The task of the expert witness in mental retardation encompasses much more than just taking the witness stand and pronouncing a diagnosis. The expert should also be an integral part of the diagnostic process, taking an active, if not a lead role in investigating various aspects of the individual's life. Included in these assessment areas are gathering background information and reviewing records; collecting and analyzing testing and observation data; interviewing the individual and the individual's family, friends, and close acquaintances; and determining a final diagnosis that is accurate and legally binding. This diagnosis may or may not require the development of a full-scale psychoeducational report, the choice of which is at the discretion of the referring attorney. Once on the witness stand, it is a vital part of the expert's task to educate not only police and law enforcement agencies, but members of the opposing sides of the legal profession, and all members of the court, including judge and jury, about the nature of the disability.

Once the diagnosis is confirmed, the expert must investigate the psychological status and related legal standing of the defendant. Of the tasks the expert is likely to assist with, the most important is usually the determination of a defen-

dant's level of competence. This issue is a Pandora's box for several reasons, including the fact that questions of competence vary widely according to legal situation. For example, the legal standard for competence to stand trial is considerably different than the standard to offer competent testimony or confession. Therefore, each new case is accompanied by many more logistical concerns than just those dealing with defendants' abilities to understand the nature and seriousness of the charges against them and to assist in their own defense. There is a pervasive belief among many laypersons that people with mental retardation are inherently incompetent, a belief that is founded in ignorance and prejudice. There currently exists a single test instrument that specifically distinguishes people with mental retardation who are competent from those who are incompetent for the purpose of legal procedures (Everington & Luckasson, 1989).

The process and rules of diagnosing mental retardation in a legal situation are not substantially unlike those in effect in other diagnostic situations. That is, the defendant must function significantly below average intellectually, as determined by an individually administered intelligence test (IQ lower than 75), with concurrent deficits in two or more adaptive skill areas, and be under 18 years of age at the age of onset (Luckasson, et al., 1992). For the first part of the diagnostic process – determining intellectual functioning – acceptable tests of intelligence typically include the *Stanford-Binet Intelligence Scale* (4th Edition) (Thorndike, Hagen & Sattler, 1986), the *Kaufman Adolescent and Adult Intelligence Test* (Kaufman & Kaufman, 1992), and the *Wechsler Adult Intelligence Scale – Revised* (Wechsler, 1981). Any of these tests would be acceptable, however the defendant with

*It is, perhaps, the oddest of coincidences that the implications of mental retardation, a condition often associated with terms such as "simple" and "concrete," should be so unclear and complex in the criminal justice system.*

tardation become entangled in the criminal justice system, they will likely experience more confusion and more fear of the system than persons without mental retardation. Often they may not understand why they have been arrested or detained. They may want to avoid having police officers find out that they have a mental disability. They may be reluctant to ask questions because they may not want police to think that they don't understand what is happening or being said. Sometimes, people with mental retardation may say things to the police that may get them into considerably worse legal trouble.

Complicating this situation is the fact that few law enforcement agencies and legal organizations have trained or experienced individuals at hand who can



mental retardation has probably been tested with one or more of them in the past. The psychologist may decide which instrument would be best by using past test administrations as a guide to determining the information most needed for accurate diagnosis.

The second requirement – determining adaptive skill functioning – is not quite so easy to satisfy. Though the instrument most often used to determine adaptive skill functioning in a criminal defendant is most likely the *Vineland Adaptive Behavior Scale* (Sparrow, Balla, & Cicchetti, 1984), the accurate determination of an individual's adaptive functioning requires extensive data gathering and analysis from various sources. The expert must collect data about the defendant's functioning *prior* to incarceration, and determine if the level of the defendant's competence noted on the "outside" differs from the level noted while incarcerated. It is important to note that, while most defendants will function at a lower level under the strict conditions of incarceration, the complete opposite may be true for defendants with mental disabilities. Defendants who have mental retardation will very likely function more effectively and efficiently in a highly structured environment such as jail than they would on "the outside." The crucial factor here is to accurately determine whether the defendant functioned less competently prior to incarceration, which could constitute a very important point at trial, particularly during sentencing. For this, extensive interviews, using the *Vineland* interview edition or a near substitute, should be performed with several individuals, particularly those who are very well acquainted with the defendant's functioning. The respondents for these interviews should be those people who are the most responsible and reliable among the defendant's family members, romantic interests, and close friends. It is generally not a good idea to use jail guards or police officers as respondents for this part of the assessment. To get information on the early social and academic development of the defendant,

interviewing teachers, principals, psychologists, counselors, social workers, and/or probation officers is advisable.

It is the final clause of the definition of mental retardation – age of onset – that often significantly confounds the diagnostic process. Technically, it is not possible to *initially* diagnose a person as having mental retardation after the 18th birthday. However, for various reasons that were prominent during the late 1970s and 1980s, an educational diagnosis of mental retardation was sometimes considered something of a last resort. Many young people who did, in fact, have mental retardation were identified as "severely learning disabled" or "communication disordered," which were then seen as less stigmatizing diagnoses than "mental retardation." School districts were sometimes unwilling to diagnose mild mental retardation in students, particularly students who were members of ethnic or racial minorities, because of the threat of possible litigation (*Larry P. v. Riles*, 1971; 1979). When this occurred in the past, the individual may well have received special educational services, but *not* under the diagnostic category of mental retardation. Therefore, a thorough review of the defendant's past educational and psychological records is absolutely vital to a correct, possibly *ex post facto* diagnosis of mental retardation. Without such records, a "retroactive diagnosis" of mental retardation would be highly suspect and extremely difficult to prove in court (*Texas v. Webster*, 1996).

Finally, an expert cannot testify as to the mental retardation or the competence of a defendant without having collected or been privy to considerable data on the defendant's overall functioning. This would include an accurate social history, which is most often supplied by the police, attorney, or court-appointed investigator. Such a history should include both distant and recent background information on the defendant's social skills, hygiene habits, work skills, communication skills, leisure skills, travel skills, home living skills, health and safety skills, self-direction, and com-

munity use skills. This information is also vital and very useful to the accurate determination of competence. A recent death penalty case of a man with mental retardation who was never diagnosed in school was lost, at least partially, because of the lack of an adequate and accurate social history.

It is, perhaps, the oddest of coincidences that the implications of mental retardation, a condition usually associated with terms such as "simple" and "concrete," should be so unclear and complex in the context of the criminal justice system. The experienced professional in mental retardation can be of incalculable value as a resource to the legal system. Qualified experts in mental retardation can do much more than just identify the specifics of the defendant's abilities and deficits; they can do a great amount of good in helping members of the court learn about and understand the numerous nuances associated with mental retardation.

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## The Bewildering Life of Richard Lapointe

by Robert Perske

Richard Lapointe was born with a brain malformation called Dandy Walker syndrome, which wasn't discovered until he was 15 years old. By then the malformation had caused extensive damage in all of his developing physical and mental systems. Appearance wise, his head was enlarged from hydrocephalus. He was hard of hearing in both ears and wore thick glasses; as a child he was nicknamed "Mister Magoo." Even so, he answered the taunting with a single, well-memorized sentence he still uses today: "It takes a bigger man to walk away."

Rich is not athletic. He walks and never runs. If he stops or turns too quickly, he becomes dizzy. He can't lift more than 50 pounds due to the surgically-implanted fluid-drainage system in his skull. Dandy Walker damaged his ability to solve complex abstract problems of living. But, he has survived in the community by trying to do good, concrete thinking and good, concrete work. He depends on authority figures to tell him things he cannot fathom.

When anyone asks about his life, Rich is quick to say, "I survived five brain surgeries." He chose a career of dishwashing and has worked in almost every restaurant in Manchester, Connecticut. He liked to come out of the kitchen areas and talk to customers he knew, especially police officers. Rich also has done volunteer service in agencies for the blind and for people with cerebral palsy.

While volunteering, he met and married a woman with cerebral palsy. The couple gave birth to a son. Their family were regular members of St. Bridget's Roman Catholic Church in Manchester. Rich was a member of the local Knights of Columbus. The Lapointes' son attended St. Bridget's school. The family, of course, did not have it easy, but they were close knit.

Ten years ago, on Sunday, March 8, 1987, Rich's wife's 88-year-old grandmother, Bernice Martin, was murdered

shortly after suppertime. It was a raging, athletic murder. She was beaten, ligatures made from strips of torn clothing were wrapped and knotted tightly around her neck and wrists, she was raped with a blunt object, and the attacker masturbated on the bedspread. Possibly the same blunt object caused strangulation by compression on the right side of the neck. She was stabbed 10 times in the back and once in the stomach. Then fires were set in her apartment in three different locations.

That very Sunday – after church and after lunch in a restaurant – the three Lapointes had spent the afternoon at the grandmother's apartment watching the Detroit Pistons beat the Boston Celtics. They went home at 4:30 p.m. and Rich walked the dog. Then the family had supper. The son was readied for bed and the three watched television until an anxious aunt called around 8 p.m. The aunt said she couldn't reach Mrs. Martin by phone, and asked Rich to check on her. Rich took the 10-minute walk to Mrs. Martin's cottage. The doors were locked. He called his wife and the aunt from a neighboring cottage. He walked back and saw smoke coming out from under the eaves. Returning to the neighbor's cottage, he called 911 at 8:27 p.m.

After two years of police investigation, the case was growing cold. A new lead detective, Paul Lombardo, was assigned to the case and he began focusing on Rich. Meanwhile, Rich kept greeting officers in restaurants and on the street with the same conversation openers: "Have you solved Bernice Martin's murder yet?" or "Am I a suspect?" Everyone who has worked with people like Rich is used to hearing such odd, repetitive conversation starters.

On July 4, 1989, Rich received a call from the police asking him to leave his preparations for an Independence Day picnic and come down to the police station. The police said they'd get him back in time for the festivities. He was picked

up, and upon arriving at headquarters an officer read him his Miranda rights and had him sign a waiver of rights sheet. They walked him past an elaborate series of large charts along the wall containing fake evidence and the name "Richard Lapointe" printed in large letters on each poster. Rich, with his limited vision, didn't even see them. He also didn't see the poster that listed "Friday and Gannon" as detectives on the case. Lombardo took Rich to an upstairs room where he was interrogated from 4:30 p.m. until 1:30 a.m. The detective swore in court, under oath, that no record of what was said and done was made: no audiotape, no videotape, no written record.

At Rich's trial, Lombardo admitted that he told Rich they had evidence showing him to be the murderer of Mrs. Martin. Rich said later that he never believed a policeman would lie to him. According to court records, during the interrogation, a first confession was printed out by Lombardo in large block letters: "ON MARCH 8, 1987, I WAS RESPONSIBLE FOR BERNICE MARTIN'S DEATH AND IT WAS AN ACCIDENT. MY MIND WENT BLANK." As it was printed out, Rich said that he had to go to the bathroom, and Lombardo told him to sign the confession and he could go. He signed, and then when he returned, he recanted. Lombardo took him back into the room for another one-on-one session. This time he produced a typed confession of 157 words that ended with, "If the evidence shows that I was there, and that I killed her, then I killed her. But I don't remember being there." A third one-on-one session was then conducted by Detective Michael Morrissey. Rich later said in court that Morrissey scared him by saying that if he didn't tell "the truth" his wife could be put in jail and his son taken away. Morrissey obtained a 212-word confession that he printed and Rich signed. This confession was more detailed, but

it only matched the police reports.

By 1:30 a.m. on July 5, after hours of questioning and three dissimilar signed confessions, the police let Rich go home. He got about four hours sleep, got up at 5:30 a.m. and walked to his dishwashing job, and was arrested after work that evening.

After his arrest, Rich's in-laws pulled away from him, along with his son and wife. He was isolated in jail for three years with virtually no visitors while he awaited trial.

During the actual trial, forensic experts testified that the crime didn't happen the way the police reported it. For example, according to the police reports and the confessions, Rich raped Mrs. Martin with his penis; forensic experts testified that a blunt object was used.

According to police reports and the confession, strangulation was done with both hands around the neck; forensic experts testified that it resulted from compression with a blunt object on the right side of the neck. The reports and confession claimed that he raped her in the bedroom and stabbed her on the couch; she was actually stabbed on the bed. Also, the police wrongly reported that the neighbor who let Rich use the phone saw him near the cottage at 7 p.m., while the neighbor testified under oath that she only saw him around 8 p.m. when he asked to use her phone. In spite of these contradictions, the jury found Rich guilty based on the confessions. No physical evidence tied him to the crime.

During the trial Dandy Walker syndrome was defined so vaguely that the

prosecutor was able to convince the jury that Rich was of "average intelligence." A neurosurgeon from Yale did show tomography photographs of a normal brain and one with Dandy Walker, pointing out the actual damage and explaining how it impaired Rich's functioning. It was probably this testimony that convinced the jury that mitigating factors existed, which kept Rich from being sentenced to the electric chair. Instead, he received life plus 60 years.

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## The "Friends of Richard Lapointe"

It all started with a frantic phone call from an anonymous person. "I read your book, *Unequal Justice?*", the person said. "You need to know there's a case like those you wrote about right here in Connecticut." I checked out the tip.

On May 6, 1992, I walked into Hartford Superior Courtroom A2 for the first time on the first day of the murder trial of Richard Lapointe. I sat alone on the left side of the courtroom behind him and his two public defenders. Everyone else in the audience sat on the right side behind the prosecutors, and it didn't take long to learn that those people wanted Richard to die in the electric chair.

By week's end, it seemed to me that I was witnessing the worst set-up of an innocent person with a disability that I'd ever seen. The situation became so upsetting, that by 1 a.m. on Monday, I got out of bed and called colleagues' answering machines until dawn. I shared what went on that first week in the trial. As a result, eight people sat in court behind Rich on that Monday. They observed the situation and passed the word to others. By

the end of the 48-day trial, at least 40 self-appointed friends of that once friendless man attended when they could. They sat behind Rich through every word of testimony and every legal argument. They rallied when he took the stand and when attorneys gave their summations. And when the judge sentenced Rich, they were there, and wept.

After the trial, Rich's friends stayed together and became an official organization: *The Friends of Richard Lapointe*. A core group of members have traveled from all corners of Connecticut every other Wednesday for the past five years to meet in a back room of a Burger King in Wethersfield. The group gathers because we all long to correct what we view as a miscarriage of justice. We meet because, if we don't, Rich will just disappear into the prison system and be forgotten like so many before him.

Members of *The Friends* visit Rich in prison and are available to him by telephone. One member meets with him at least once a week to work on literacy. One serves as his official prison sponsor.

The group prepares gift packages for him. *The Friends'* enthusiasm and knowledge of the case have led the media to produce numerous helpful national and local reports, including a *60 Minutes* segment on Rich narrated by Mike Wallace. And although this group could never do what lawyers can in the courtroom, even Rich's attorneys gain new energy from the involvement of *The Friends*.

On July 5, 1996, the Connecticut Supreme Court voted 5-2 against Rich's appeal. Now comes the *habeas corpus* appeal. If it is lost, Rich will be closer to living out his life in prison. In the meantime, *The Friends of Richard Lapointe* continue to support him because we believe he is an innocent person with a mental disability who has been unfairly arrested, tried, and convicted for a crime he didn't commit, and that he will probably never be released without the help of a citizen's group. Even if we are working for him, he may still never get out.

*Contributed by Robert Perske, Darien, Connecticut*

## Challenging Stereotypes and Ignorance: The San Francisco Police Department

by Forrest Fulton

Historically, police officers have been criticized by courts, citizen groups, and government organizations for not properly responding in situations where a person has a disability or is in an emotional crisis. Many law enforcement misconduct investigations have found that

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the core of the problem is the lack of specialized training given to police and corrections officers about how to respond to persons who have physical or cognitive disabilities or a mental illness. I have listened as family members have related to me horror stories about how officers treated their relatives who were in crisis. Some of these police contacts resulted in human tragedies, and either the individual or the officer was seriously injured during what became a violent confrontation. Many family members have told me of their fears about calling the police because of concerns about the safety of their loved ones. Yet, if you go up to almost any law enforcement officer and ask him or her if there is any problem in their responding to people with disabilities, the officer will almost always say that there is no problem.

In response to this situation, the San

Francisco Police Department, in 1995, developed the class *Law Enforcement Officers Responding to People with Developmental Disabilities*. The class came about when the California State Council on Developmental Disabilities funded a prototype lesson plan for training law enforcement officers. The council's requirement for the lesson plan was that it be formatted into a 3-day train-the-trainer system, and that the content be acceptable for California State Certification and Approval. The resulting class was developed by officers for officers, and approved by the California Commission on Peace Officer Standards and Training and the California State Training for Corrections officers.

The curriculum provides in-depth training for recruit and senior officers that prepares them to return to their home units or departments and train other officers in how to better serve persons with disabilities. It teaches officers how to respond appropriately to persons with disabilities in each of the three groups into which officers often categorize people: victims, suspects, and witnesses. Content includes information about different types of disabilities, stereotypes about persons with disabilities, appropriate response procedures, providing ADA-mandated accommodations, department policies, and techniques for communicating with persons who have disabilities.

During the class, officers who are accustomed to fighting crime and who routinely see the wreckage of illegal acts are exposed to the physical and psychological battle that people with disabilities engage in on a daily basis. In the training, police officers talk directly to people who have disabilities, and listen to their stories of what life is like with a disability. Family members talk to police about the needs of their member with a disability. Through this, officers learn to

connect with people who have disabilities on a very human and personal level. As one officer stated after the training, "I have learned that basically all of us will become disabled, some of us early in life and some of us later in life. I've learned that it is not 'them and us', it is just 'us'. We are all in it together." The magic of the class occurs when hardened and sometimes cynical street cops become empowered agents for social, ethical, and human equity.

The reviews of the training from the class participants have been outstanding and the results are beyond expectations. Officers have related that they have noticed a change in how they communicate in everyday situations with all types of people – not just with persons with disabilities. The class has also enabled officers to move beyond stereotypes of persons with disabilities and connect with the person who's requesting service. As the success of the program has become known outside California, requests for training have been coming from officers across the nation.

The majority of the public and the majority of law enforcement officers believe that what the police do is catch bad guys. But, what we really do is provide service to people in need of help, including people with disabilities who attempt to navigate the criminal justice system while dealing with animosity and social apathy.

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## Being There: The Role of Advocates

by Dolores Norley

Special laws and legislation are not of first importance in protecting the rights and interests of persons with developmental disabilities in the criminal justice system. Of first importance is that advocates be there to educate the criminal justice personnel.

Of course existing laws matter, but it's fatal to depend on them early on because the truth is that neither the courts nor most attorneys know the esoteric, protective laws that relate to persons with developmental disabilities. Nor do they know how the defendant operates, what to expect of the defendant, or what the defendant understands. More often than not they see the defendant as mentally ill, unpredictable, and maybe dangerous. Short of having the defendant caught standing over a victim with a smoking gun, the courts are eager to handle persons with developmental disabilities with dispatch and humanity. Judges are uncomfortable with the possibility that they will do the wrong thing and that they don't know the options they have in these seldom-heard cases. They often say at the Bar, "I haven't a clue..." We, as advocates, must help them by organizing and presenting to the court all the friends, facts, and community resources they need.

The first goal of advocates is to help get the defendant out of a terrorizing and often physically/sexually dangerous incarceration as quickly as possible. Family, friends, teachers, workshop personnel, employers, advocacy organizations, psychologists, and social workers should be there. They may have records and knowledge not otherwise available to the defense or the court. And they can offer support for a plan of secure supervision as an alternative to incarceration. Their offers of participation on the plan must be presented to the public defender or private counsel first, and as the case progresses to the state's attorney before the court approves it. It's important that these advocates don't wait

for defense counsel to call upon them. The counsel may not even want advocates there because few have had experience with defendants of significantly diminished cognitive ability and few understand the disability. If the defense counsel resists hearing helpful information, if it is clear that the defendant is not being adequately represented, then advocates must speak up, firmly but respectfully, in court. Most judges will not block information.

If it is clear to the judge that the community will provide the kind of supervision the situation and defendant require, the court is often willing to accept a plan to keep the person out of jail or prison, except in the case of capital and some pedophilic crimes. In some states there are codified Individual Justice Plans. When I have acted as an advocate in court, I've heard most judges say some variation of, "Thank God for someone who knows about this disability. I'm surrounded by criminal attorneys, and they don't know any more than I do about it."

In addition to advocating for specific defendants, we must continually educate the criminal justice system about persons with developmental disabilities. Few Florida courts, for example, know that they must appoint appropriate expert witnesses, not psychiatrists. The average public defender doesn't know who those experts should be; they often think they are dealing with mental illness when they are dealing with cognitive disabilities. Too many courts order psychiatric (rather than psychological) evaluations for incompetency to stand trial. So, we must train constantly. In 1989, with a grant from our state's Developmental Disabilities Planning Council, we started putting on the desk of every judge, public defender, state's attorney, and liaison social worker a small brochure titled *Defendants with Retardation: Dilemma for Criminal Justice Personnel*, that summarizes the controlling statutes,

placement options, and differences between mental retardation and mental illness. In addition, we offer training sessions that inform criminal justice personnel about acceptable procedures, the law and its rationale, even providing model petitions and orders on paper and computer disk. Offering the carrot of Continuing Legal Education credits brings in many attorneys.

*It takes a few advocates  
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to make a difference.*

My personal fire-in-the-belly is prevention. That means police training. Forty-three years of training thousands of police in most states and four countries have provided enough feedback to convince me that the heightened awareness that training injects in the police system can help divert most people with developmental disabilities from the system altogether.

It takes a few advocates with a bulldog's passion for a given area of reform to make a difference. That kind of passion from advocates for persons with developmental disabilities, plus years, plus one or two public officials with the courage to speak from the inside, can change the ways in which our criminal justice system treats suspects and offenders with disabilities.

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# Communicating with People Who Have Cognitive Disabilities

by Mary F. Hayden

As a result of Title II of the Americans with Disabilities Act, law enforcement and court personnel are faced with making reasonable accommodations to people with cognitive and other disabilities. Communication is the first area where professionals need to think about how they are accommodating an individual with cognitive disabilities. The purpose of this article is to raise awareness of certain factors that need to be considered in communicating with persons with cognitive disabilities within the context of the justice system, and to offer a framework for further discussions on developing guidelines and procedures that ensure reasonable accommodations at all levels of our legal system.

## Communicating Concretely

People with cognitive disabilities tend to think in concrete and literal terms. As a result, they may not understand the meaning of words such as parole, probation, plea bargaining, restitution, community service, and waiver of rights. It is also true that although a person may understand a word, they may not understand the consequences of the word. The concept of restitution may be too abstract for an individual with a cognitive disability. The person may understand and have a deep desire to pay for damages he or she caused, but may not understand all that restitution entails. For example, people with cognitive disabilities typically live at or below the poverty level. They might not have the money to make restitution even though they want to. Unless a defense attorney is willing to sit down with a client and examine the client's personal budget to determine if restitution is possible, the attorney cannot negotiate for restitution in good faith. If it is fiscally possible for a client to make restitution, an attorney

still needs to assess whether the client needs a court-appointed advocate or conservator to ensure that the client follows through with payments.

When communicating with persons with cognitive disabilities about their rights, the consequences of their behavior and choices, and their options, the safest approach is to involve an individual who is close to the person – such as a friend, family member, social worker or counselor – to help interpret what is being said and ensure that the person understands what is going on. It is important, while doing this, to continue talking to the person with a disability directly, rather than talking about him or her with others as though the person were not present.

## Interpreting Agreement

People with cognitive disabilities frequently will agree with others even when it is not appropriate. This may occur for several reasons. They may be intimidated by authority figures. They may have been told that the police are their friends and that they should trust them; they may therefore want to please a police officer by saying what they believe the officer wants to hear, regardless of whether it is true or not. Some people with cognitive disabilities want to hide the fact that they have limitations and that they do not understand everything; they may agree with people because they know most people will not ask them to elaborate on a "yes" answer. As a consequence of a tendency to agree with others, police cannot assume that individuals with cognitive disabilities understand their rights when read to them. Additionally, law enforcement personnel and attorneys cannot place a piece of paper in front of a person with a cognitive disability, ask the person to read the information, and then ask the person if

he or she understands what it says. If the person responds in an affirmative manner, the response could mean that (a) the person did read and understand the information; (b) the person may not know how to read and said "yes" to hide an inability to read; or (c) the person may know how to read, but does not understand the information and said "yes" to avoid appearing "stupid."

To ensure that persons with cognitive disabilities understand what is said to them verbally or in writing, and that an affirmative response to any questions truly reflects a "yes" on their part, it is best to involve a person who is in a close relationship with the individual and knows the individual well. Other options are to (a) involve a legal advocate with documented professional experience with people with cognitive disabilities; (b) read rights or statements or questions one at a time, asking the person to repeat what was said, and asking the person to explain the meaning of what was said before going on to the next item; or (c) use an alternative format to communicate information to the person, such as pictures.

## Asking Questions

Sometimes individuals with cognitive disabilities require more time to process questions than they are allowed. At times questions may be too complex or confusing, or may be worded in such a way that they lead the person to an incorrect response because of differing interpretations of the question. Complex questions should be broken down into simple, concrete questions. If the person does not immediately respond to a question, they should be allowed 30 seconds to answer, and then asked if the question should be stated again. Sometimes persons with cognitive disabilities may give responses that seem factually incor-

rect; this may be because they have interpreted words differently than intended. In these situations, the information can be verified with someone who knows the person well. Open-ended questions and yes-no questions tend to be difficult for persons with cognitive disabilities. With yes-no questions, they are more likely to answer “yes” regardless of whether it’s the correct answer. Either-or questions and multiple-choice questions with pictures may be more useful. It is important that investigators ask for the same information in alternative ways to determine whether answers are consistent with each other and what, if any, systematic biases are operating. Where possible, answers should be verified by independently obtained information (e.g., informants, files or observations).

### **Understanding Speech**

Sometimes people with cognitive disabilities have articulation difficulties or limited language and, as a result, their speech may be difficult to understand. If a person is upset or nervous, his or her speech may become even less understandable. Sometimes talking with the person for awhile helps the listener become accustomed to hearing their speech pattern. It may also be helpful to do the following:

- Use simple clarification (e.g., “What? I didn’t understand you”).
- Re-ask the question (e.g., “Let me ask that again. I couldn’t get your answer”). It may be necessary to re-ask the question a number of times. This is preferable to jumping to an interpretation which may be wrong.
- Try to calm and focus the individual (e.g., “I know you are really trying hard to answer my questions. I know you are trying hard to get me to understand you. I really want to understand you. So, how about if you try to talk a little slower and take your time. I will try to listen harder”).

If these strategies do not work, other approaches must be used to understand the person’s method of communicating; this may include having an advocate or someone who knows the person well present during questioning and proceedings. An advocate or person close to the individual can help the person understand what is being asked and help others interpret the answers. In using an advocate or other familiar person, attorneys and law enforcement agents should discuss the overall situation and questions with the advocate before questioning begins so that the person can think about how to translate information into concrete, understandable terms for the person with a cognitive disability.

### **Staying Calm and Focused**

Like everyone else, people with cognitive disabilities may associate a question with a previous event that appears to be unrelated. In such instances, it may be helpful to link the association with the question by responding, “That’s interesting. How does that relate to (question content)?” Other possible responses include suggesting that such topics be discussed at the end of the interview, taking a break from the interview and letting the person talk, and redirecting the person to the question.

Sometimes people become disruptive or behave inappropriately because they are bored, scared, angry, sad, worried about a loved one who has been hurt, or reminded by the current situation of an unpleasant past experience. If this occurs possible approaches include:

- Redirect the person back to the question in a firm and polite manner.
- Smile, use words of encouragement, pay close attention to the person, and answer questions.
- Ask if the person needs a break.
- Ask whether the person wants to answer the question or go to another.
- If the individual poses a physical danger to anyone, terminate the interview and try again later.

Other responses that may be problematic include a response that is irrelevant or inadequate. Options include rephrasing the question, using an alternative format such as pictures, or bringing in someone close to the person to help interpret what is being said.

### **Responding to a Crime Victim**

When a person with a cognitive disability has been a victim of a crime, that person may behave in ways that are mistakenly attributed to their disability. They may be fearful, depressed, aggressive, withdrawn, acting out, or self-destructive. The person may not have the language skills or vocabulary to report an incident or be viewed as a reliable witness. Concessions must be made by law enforcement personnel, attorneys, and judges to understand the victim’s method of communication. An advocate or someone close to the person may be needed to help the victim understand what is being asked during the investigation. Articulation difficulties may require a speech therapist or someone close to the person to “interpret” the person’s statement or testimony.

Many adults with cognitive disabilities have a high need to be accepted. If the perpetrator offered friendship or attention, it may have been hard to say no. As a result, the victim may have ended up in an exploitative or abusive relationship that they perceived as friendship. When talking to or questioning the victim, the interviewer needs to assess if this is the case. Under such circumstance, the appropriate authorities should be notified.

*Mary F. Hayden is a Researcher with the Center on Community Living, Institute on Community Integration, University of Minnesota, Minneapolis. She may be reached at 612/625-6046.*

## Pueblo DD/MH Consortium Diversionary Program

by Larry Velasco

A decade ago in Pueblo, Colorado, a number of developmental disability and mental health agencies were playing a game of "hot potato" whenever an individual with developmental disabilities and mental health needs committed a crime. Each specialized agency referred the individuals to another agency, claiming that they were not equipped to handle the complex needs of this population. Everyone was very frustrated and angry at everyone else for not taking care of the "problem." At one point a case manager came to the Pueblo County Board for Developmental Disabilities, Inc. (PCBDD) Executive Director and told him he had been called at 1:00 a.m. by an official of the Colorado State Hospital demanding that this case manager come and pick up

*A decade ago developmental disability and mental health agencies were playing a game of "hot potato" whenever an individual with developmental disabilities and mental health needs committed a crime.*

a "retarded" person who was raising hell in the hospital and who was totally inappropriate for the mental health setting. That was the proverbial straw that broke the camel's back.

The PCBDD Executive Director convened representatives from all local agencies which would possibly have some involvement with persons with developmental disabilities. To make a long story short, a diversion program for individuals with developmental disabilities and

special criminal justice needs was established in April, 1987, and named the Pueblo DD/MH Consortium. The major co-developers of the program included the Pueblo County Board for Developmental Disabilities Inc. (PCBDD), Colorado Mental Health Institute-Pueblo, Pueblo Regional Center, Spanish Peaks Mental Health Center, St. Mary-Corwin Hospital, and Parkview Episcopal Hospital. Ultimately, the Pueblo District Attorney's Office, Police Department, Sheriff's Department, District and County Court Judges, and Probation Department also became involved.

Dr. Peter Holmes, from Eastern Michigan University, was invited to consult with the group to formulate approaches towards dealing with this challenging population. He met with the Consortium in September, 1987, and the outcome of the consultation was that the group established a cooperative process for responding to issues on a case-by-case basis. Case managers, psychologists, and social workers were among the first individuals to make presentations to the DD/MH Consortium. The Consortium members reviewed all aspects of each case and recommendations were made by the members to piece together a cooperative intervention plan for each individual.

During the subsequent two years the Criminal Justice Intervention Process (CJIP) was developed by Consortium members. The CJIP provided a "flow chart" process that guided the courts, case managers, and agencies in "creative sentencing" for offenders with developmental disabilities. The pressure was taken off the judges who had been attempting to direct agencies in approaches toward resolving the problems of offenders with developmental disabilities. Unfortunately, those approaches had not worked very often and a revolving door treatment cycle continued for many of the "bad actors" who could not refrain from reoffending.

With the initiation of the CJIP, offend-

ers were charged for their offenses and placed on probation. A plan of intervention was developed by the DD/MH Consortium and was included as treatment requirements for the offender. Creative sentencing could be used by the judges,

*Over 80% of the 50 individuals served through the DD/MH Consortium have been successful in their programs.*

including consequences if the offender failed to cooperate (i.e. jail time of 24 hours to 2 weeks could be imposed). If the individual did not profit from jail time, other consequences were imposed (i.e. personal property could be taken away for a specified period of time and returned after the individual "earned" the property back; recreational outings could be taken away; special treats could be withheld etc). The DD/MH Consortium has successfully used the CJIP with approximately 50 individuals since 1989.

Another outcome of the DD/MH Consortium has been the development and implementation of the Appropriate Sexual Expression Therapy (ASET) group. This group therapy for sex offenders with developmental disabilities has been provided since 1994, and has served eight sex offenders. Two individuals have successfully "graduated" from the group without relapse.

In addition to the ASET group, the DD/MH Consortium has spearheaded the development and implementation of the DD Offender Program. This residential program provides two homes



that each house three individuals and also oversees the programs of an additional four individuals who are living with roommates in the community, on their own or in other facilities. Components of the program include a highly structured and supervised residential setting, integrated community employment or work skills training, provision of extensive structure and supervision, highly specialized case management services, psychological services, and development of individualized behavioral point/level programs. Placement in the offender program has also been used in the CJIP creative sentencing process.

The work of the Pueblo DD/MH Consortium has enhanced the effectiveness of treatment and prevention of relapse for those individuals who have previously had long-term problems and whose ability to live in the community has been in jeopardy. Over 80% of the 50 individuals who have been served through the DD/MH Consortium have been successful in their programs. The rate of recidivism through the courts is at about 20%, primarily due to charges

pressed by persons within the human services system to insure that individuals receive meaningful consequences. Through the DD Offender Program and ASET group it has become apparent that people with developmental disabilities who are also offenders are able to improve with therapy, structure, and consistency. They can learn to better control their attention, calm themselves down, improve life skills through program activities (such as reading and writing ASET group homework), identify “stinking thinking” and replace it with “good thinking,” identify the behaviors they want to change, reach out for assistance and support when they feel out of control, and be compassionate and supportive with one another.

The education of all persons in the justice system – including judges, attorneys, police, and detention officers – as well as professionals in the human services system is resulting in improved treatment and meaningful consequences for offenders who have developmental disabilities. Judges and district attorneys are calling case managers when indi-

viduals with special needs come before them without human services supports, and the public defender’s office is participating in developing viable alternatives in some difficult cases.

As the DD/MH Consortium marks its 10th year, there are positive results to celebrate. The challenges that lie ahead include continuing to build on past successes in a manner that is responsive to societal changes, such as the removal from the welfare system of persons who may have special needs and who may be placed in desperate financial situations that could lead to violations of the law. In this climate, the Consortium will continue to work collaboratively with both the human services and legal system to offer people alternatives and to ensure appropriate consequences for those who do become involved with the criminal justice system.

*Larry Velasco is Executive Director of the Pueblo County Board for Developmental Disabilities, Inc., Pueblo, Colorado. He may be reached at 719/546-0572.*

## Ron’s Story

My name is Ron Gisi and I am 44 years old. I live with my dog Lucky in a house that I rent. I’ve lived there for four years. Before that I was in the DD Offender Program. I lived in a house with two roommates and staff who help people who have had some problems with the law. Before I was in the DD Offender Program, I lived in an apartment run by the Mental Health Center. I had a roommate and staff lived next door. I had some problems and I really wanted more help. I didn’t want to hurt other people any more.

The DD Offender Program helped me and I have a nice team that still helps me. Ed comes by most days and helps me with shopping, paying bills, my appointments, and other things. I like ani-

mals, like my dog Lucky. I’m training that ole girl; she knows everything now.

Since I started in the DD Offender Program, I started going to visit my family in Denver again. I first started going with staff for short visits. My mom and my sister and brother liked the progress I was making with my behavior. They wanted me to visit more. I went home this Christmas for three days. I went on the bus. Sometimes Lucky gets some Christmas presents, too. Mom says my behavior deserves an A plus plus!

I work at Mesa Veterinary Clinic and I get Sunday and Monday off. I’ve worked there almost 7 years. On my job I move some of the dogs and clean their cages. Ajax the Cat is there watching me and I give him some water. Sometimes we have

big birds, pigs, a lamb and, one time, a camel. I don’t think anyone else could do my job. I want to keep that job!

I like to listen to music, turn on the TV and hear some Spanish. I like to go out to eat, take some walks, play cards and clean my neighbor’s sidewalks off. I go fishing and on picnics with friends.

I meet with my team every month to talk about how I’m doing. I just want to keep my record clean and I want to stay in one place. No more moves. And I don’t want to go back to the state hospital. I want to follow all my programs and work with my team so they are proud of me.

*Contributed by Ron Gisi, Pueblo, Colorado*

## The Education of Juveniles in the Criminal Justice System: A Mandate?

by Barbara E. Ransom and John Chimarusti

Approximately 450,000 juveniles are confined to juvenile correctional facilities and state training schools, and 300,000 serve some time in adult jails annually in the United States (Leone, Rutherford, and Nelson, 1991). On any given day more than 300,000 juveniles are incarcerated nationwide (Schwartz & Koch, 1992; U.S. Department of Justice, 1991). Arrests of juveniles ages 10 to 17 for violent crimes jumped approximately 70% from 1980 to 1995, and all indications are that the numbers will continue to rise.

The prevalence of disabilities within the juvenile inmate population is about four to five times greater than in the general population. Casey and Kelirtz (1990) conducted a meta-analysis of the few prevalence studies available on juvenile offenders and reported an estimate of 12.6% with mental retardation, 35.6% with learning disabilities, and an excess of 22% with mental health issues. Data collected by Bullock and McArthur (1994) from a national survey of state youth correction agencies suggest that approximately 23% of incarcerated juveniles are individuals with disabilities. The predominant disabilities among incarcerated juveniles as reported by the 30 responding states were learning disabilities (10%), mental retardation (2.6%), and emotional disturbances (10%) (Bullock and McArthur, 1994).

In spite of this large number of juvenile offenders with disabilities in the criminal justice system, and laws clearly stating that they shall be provided an appropriate education, correctional education programs are not complying with the mandates. The Individuals with Disabilities Education Act of 1990 (IDEA), requires that all children with disabilities have available to them "a free and appropriate public education which emphasizes special education and related services designed to meet their unique

needs." Children are eligible for services under the IDEA through their 21st year in most states. Because the juvenile justice system generally defines youth as up to age 18, juveniles in juvenile facilities are entitled to IDEA services. When a state provides services through age 21, young offenders in the adult correctional system continue to be eligible.

Under the Civil Rights for Institutionalized Persons Act authored by the Department of Justice, individuals within the correctional system should receive rehabilitative services not below a constitutionally guaranteed minimum standard of care. "Institutionalization does not set aside the substantive rights for the developmentally disabled person to individualized assessment, eligibility for developmental disability services, an individual habilitation plan, or Individual Education Plan [IEP], and service delivery in the least restrictive appropriate alternative environment, even if the appropriate level of restrictiveness is an institutional setting" (Levine 1995).

Correctional administrators and state education agencies have been slow to realize that *all* of the IDEA's provisions, and the educational provisions under Section 504 of the Rehabilitation Act, plus the applicable state regulations, apply to all children with disabilities, including eligible youth who are in correctional facilities. They are even slower to develop programs to meet the needs of this population. The mixed signals from the federal government constitute one reason for the inadequacy of educational programs.

Since 1977, plaintiffs in more than 20 class actions have tried to secure the rights of incarcerated juveniles with disabilities to receive an appropriate education and related services. Many of the cases produced settlement agreements; in one that did go to trial, *Alexander S. v. Boyd* (1995), Judge Joseph F. Anderson,

Jr. for the South Carolina federal district court ruled that the IDEA applied to correctional facilities. The facts of the case revealed that of the 2,000 juveniles annually committed to long-term correctional facilities, as many as 50% were in need of special education but did not have fully formulated IEPs as required under the IDEA. Judge Anderson contacted the U.S. Department of Education to clarify that school records can be sent from the prior school district to the correctional facility and that the educational services under the existing plan can be implemented during periods of short-term, temporary confinement.

Leone and Meisel (1996) looked at the impact of three other cases, *Andre H. v. Sobol*, an action against a juvenile detention center in New York City that resulted in a settlement after 7 years of litigation; *Johnson v. Upchurch*, an action against the Arizona Department of Corrections that resulted in a settlement agreement after 5 years; and *Smith v. Wheaton*, filed in federal court in Connecticut in 1987, in which the issues have not been resolved. Among other findings, Leone and Meisel concluded that litigation in this area, although costly and protracted, is one means of improving conditions of confinement for juveniles in correctional facilities.

Education laws were written to be implemented in traditional school-based settings, and the modifications needed to implement education programs in the criminal justice setting have neither been properly documented nor consistently applied. Bullock and McArthur (1994) attribute the inconsistencies in programs for this growing population to the noticeable absence of any federal priorities or commitments. Other problems stem from funding limitations, the governance and standards of correctional educational programs, a lack of contact between correctional education

programs and students' prior schools, and the prior mobility and educational experiences of the incarcerated youth. Nonetheless, the IDEA and state laws incorporating the IDEA's provisions provide substantive and procedural rights to children with disabilities and their parents, require the use of promising education practices, and mandate that these children be educated in the least restrictive environment.

The problems are pervasive. Correctional educational programs tend to identify, assess, place, and program students based on their findings from a single intelligence test. Students who received special education prior to incarceration generally are not earmarked for special processing, and schools, incorrectly relying on the Family Education Rights and Privacy Act, often refuse to forward records to correctional facilities. Standards are needed to raise the level of performance of correctional facilities in providing special education and to insure that programs are established and adequate to reintegrate students into local schools or jobs.

It is no secret that education can be a useful tool keep youthful offenders from returning to prison once they are released. Rutherford, et al. (1985) developed the following six elements of an effective correctional special education program:

- **Functional Assessment: Effective Screening of Suspected Individuals with Disabilities.** Students in correctional facilities should be carefully evaluated by an interdisciplinary team consisting of teachers, counselors, a psychologist, social workers, parole officers, and other individuals with whom the student will work. Physical and medical examinations and speech and hearing assessments should be considered, as well, to give the team a total picture of the general health of a student.
- **Functional Curriculum.** Juvenile offenders with disabilities need to learn how to manage in the world outside the institution walls. A functional curriculum is one that relates an academic curriculum to the juvenile's daily reality, such as finding a job, managing a budget, and shopping.
- **Vocational Special Education.** Functional vocational training for juvenile offenders with disabilities must combine academic, vocational, and social skills. Teachers in correctional facilities must train juveniles in marketable skills and provide guidance in choosing a vocation. The combination of marketable and daily living skills increases the chances of surviving and staying outside the justice system.
- **Transition Services.** The IDEA mandates that eligible youth 14 to 21 years of age must have a transition plan prepared and implemented that supports their identified post-school goals. The IDEA requires the educational agency to draw on other appropriate resources and agencies to develop an effective transition plan. The Bureau of Labor, community agencies, and other services should be used to provide opportunities and support services.
- **Comprehensive Systems.** Cooperation and communication are needed both in the correctional facility itself and among the facility and other institutions in order to create a system that can effectively identify, account for, and serve the needs of juvenile offenders with disabilities. Inter-agency agreements addressing issues of record sharing, budgets, joint evaluation and planning around specific goals and objects must exist to provide effective transition plans for students 14 years and older as mandated by the IDEA.
- **Correctional Special Education Training.** The majority of teachers for juvenile offenders with disabilities lack special education certification. Teachers must be trained in special education concepts and techniques, keeping in mind the essential need to incorporate practical skills into the special education curriculum.

Bullock and McArthur (1994) suggest that qualified personnel are needed to work with juvenile offenders with disabilities and teachers trained in special education methodology must also be prepared to work within a correctional setting.

The need for positive change in correctional educational programs and in the criminal system is a public concern. Adjudicated youth with disabilities do not have advocacy groups lobbying on their behalf. They simply have not been made a priority. "In effect, education has abdicated responsibility until such time as the student is returned to the community. Only through the coordination and collaboration of different agencies will these students receive an appropriate education" (Wilhite, and Cessna, 1996). We must remember that in this country all children with disabilities, regardless of residence, have a legal entitlement to special education services reasonably designed to meet their needs.

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[Sorenson, continued from page 1] without disabilities (Wilson & Brewer, 1992). The most comprehensive treatment of these issues can be found in Dick Sobsey's book, *Violence and Abuse in the Lives of People with Disabilities*.

The great mystery is why people with disabilities and their advocates have been so silent about this epidemic of violence directed against them. Many people with disabilities or their family members have told me that they suspect that the reason they have been so slow to recognize this problem is that it is too painful to face the possibilities. The fact that the criminal justice system, the media, and academia have generally failed to inform us of the problem may often make that process of emotional avoidance moot. The police, prosecutors, victims' movement, and courts, as well as most service professionals and providers, are largely unaware of this problem.

People with developmental or other severe disabilities comprise over 10% of the population. If they were experiencing violent crime at the same level as the general population, then 10% of such police and prosecutorial cases would involve victims with severe disabilities. During a recent training session in California, 85 prosecutors and detectives who worked on sexual assault cases in one California county were asked if any of them had 5% of their caseload that involved victims with severe disabilities. No one did. At 1% two people did. This is consistent with the results found in a number of studies.

Using a very conservative rate of four times the general rate of violent crime for people with developmental or other severe disabilities, just under one-third of all police and prosecution cases of violent crime should involve victims with severe disabilities. The police, prosecutors, and courts are not bringing perpetrators of these crimes to justice at anywhere near the rate that they do perpetrators of violence against people without disabilities.

People with disabilities, their families, and advocates are beginning to speak out about this problem. There is

new and vigorous activity by people with disabilities and their families in California, Pennsylvania, Texas, New Mexico, and other states. It appears to be gathering momentum, an inevitable momentum. As the general public learns about this, there will be a growing demand that the criminal justice system take effective action to provide equal protection and equal justice. This will happen because people who have loved ones with disabilities and people with disabilities themselves have no choice but to demand it with whatever persistence and energy it takes.

California has attacked this problem by forming a working partnership between people with disabilities, their families, and advocates, professionals, service providers, and organizations representing all the elements of the criminal justice system. We all have the opportunity to help establish or join in such partnerships to help lead in the reforms and adaptations that this problem will demand. It is an opportunity that needs to be taken.

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[Laski, continued from page 3] instructed by the court." Recent court decisions have upheld the civic rights of blind persons under Section 504 of the Rehabilitation Act and the ADA to serve as jurors (*Galloway v. Superior Court of District of Columbia*, 1993).

As the Court of Appeals noted in *Guzman*, each juror brings to the deliberation process his or her own background and experience. It is the judges'

role to ensure that the rights of individuals with disabilities are upheld throughout jury selection and the trial.

## Conclusion

The intention behind the American with Disabilities Act is to ensure equal protection under the law for individuals with disabilities. Our society and legal system are still in the process of interpreting and implementing that intention in relation to persons with disabilities in the justice system. Even as that process continues, those whose professions lie within that system have a responsibility and obligation to ensure that they do not treat persons with disabilities in a discriminatory manner. This obligation includes the duty of law enforcement agencies to recognize and respond appropriately to victims and suspects who have disabilities, the responsibility of detention and correctional facilities to treat all inmates equitably and respect their human rights, and the obligation of our court system to make justice accessible to all American citizens.

*Batson v. Kentucky*, 476 U.S. 79 (1986).

*Crawford v. Indiana Department of Corrections*, 1996 WL 467172 (N.D. Ind.).

*Duffy v. Riveland*, 1996 WL 583384 (9th Cir.).

*Fowler v. Gomez*, 1995 WL 779128 (N.D. Cal.).

*Galloway v. Superior Court of District of Columbia*, 816 F. Supp. 12, 15-16 (D.D.C. 1993).

H.R. Rep. No. 101-485 (III), 101st Cong., 2nd Sess. 50, reprinted in 1990 U.S.C.A.N. 473.

*Inmates of the Allegheny County Jail v. Wecht*, 573 F. Supp. 454 (W.D. Pa. 1983).

*Jackson v. Inhabitants of the Town of Sanford*, 1994 WL 589617 (D. Me.).

*Land & Water Law Review*, 175, 201.

*Love v. McBride*, 896 F. Supp. 808 (N.D. Ind. 1995).

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## Resources for Further Information

The following resources may be of use to readers seeking more information about persons with developmental disabilities and the justice system. Please contact the distributors for information about costs and ordering. This list was compiled with the assistance of The Arc of the U.S. *Access to Justice National Resource List*.

- **The International Coalition on Abuse and Disability (ICAD).**

ICAD maintains a Web site and an associated listserve that helps to link people concerned about issues of abuse and victimization of persons with disabilities. The Web site address is: <http://www.quasar.ualberta.ca/ddc/ICAD/icad.html>.

- **Community Services Reporter (July 1997).**

This July, 1997, issue includes articles profiling programs and approaches for offenders with disabilities from around the country, including the new mentoring program offered to parolees with mental disabilities in Texas. Published monthly by the National Association of State Directors of Developmental Disabilities Services, Inc. (NASDDDS). For subscription and other information contact NASDDDS, 703/683-4202.

- **Draft Report of the Victims of Crime Committee: A Criminal Justice Task Force for Persons with Developmental Disabilities (1997).**

This report contains 69 major initiatives and reforms necessary to the provision of more equal protection under the law for people with developmental disabilities. Available from Arc California, 120 I Street, 2nd Floor, Sacramento, CA 95814 • 916/552-6619.

- **PERSPECTIVE Advocacy.** An advocacy and support organization whose mission is "To ensure legal, civil, and human rights of African Americans and African Americans with develop-

mental disabilities and their families." Services include its Justice System Program that assists individuals involved in the criminal or juvenile justice systems. For further information contact PERSPECTIVE Advocacy, P.O. Box 50518, Minneapolis, Minnesota 55404 • 612/305-6916.

- **The Arc of the U.S.**

The Arc has a variety of materials and activities related to people with disabilities in the criminal justice system. Its Web site (<http://TheArc.org/ada/crim.html>) includes its Access to Justice National Resource List, as well as online versions of The Arc's criminal justice materials. Also online is a chart describing the 31 individuals with mental retardation who have been executed in the U.S. since 1976. The chart address is: <http://TheArc.org/depts/dpchart.html>. For additional information on materials and activities, contact Leigh Ann Reynolds at 800/433-5255.

- **Defendants, Victims, and Witnesses with Mental Retardation: An Instructional Guide for Judges and Judicial Educators (1995).**

This training curriculum for judges includes practical suggestions on accommodating persons with mental retardation during courtroom proceedings. Topics include identifying persons with mental retardation, facilitating courtroom communication, courtroom accommodations, and court referral for community services. The manual also lists referral agencies for each state. Available from National Judicial College, University of Nevada, Reno, Nevada 89557 • 800/255-8343.

- **Into the Jury Box: A Disability Accommodation Guide for State Courts (1994).**

This publication offers practical suggestions on how to modify each phase of the jury pro-

cess to increase accessibility for persons with disabilities. Available from Commission on Mental and Physical Disability Law, 1800 M Street NW, Washington, DC 20036 • 202/331-2240.

- **Mental Disability Law: A Primer (1995).**

This booklet offers a comprehensive overview of mental disability law, including key terms and tips on providing effective representation for clients. Available from Commission on Mental and Physical Disability Law, 1800 M Street NW, Washington, DC 20036 • 202/331-2240.

- **The Criminal Justice and Human Service Systems: A Coordination Handbook (1994).**

This publication provides information for people working in the human service and criminal justice systems when both systems are involved in the life of a person with a developmental disability. Available from the South Dakota University Affiliated Program, 414 East Clark Street, Vermillion, South Dakota 57069-2390 • 800/658-3080.

- **A Passion for Justice (1995).**

This videotape features author and advocate Robert Perske. Inspired by his book *Unequal Justice*, the videotape reveals injustices people with developmental disabilities often encounter when falsely accused of committing crimes. Available from Hilltop Productions, 24 Park Place, Suite 24D, Hartford, CT 06106 • 203/951-3557.

- **Contacts with People Who Have Mental Retardation: Training Key #353 (in press).**

This training package developed by the International Association of Chiefs of Police and updated by The Arc is designed for use in training police officers how to interact with persons with mental retardation. Available from The Arc of the U.S., P.O. Box 1047, Arlington, Texas 76004 • 817/261-6003.

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*A publication of the Institute on Community Integration (UAP) and the Research and Training Center on Community Living, College of Education and Human Development, University of Minnesota. Dedicated to improving community services and social supports for persons with disabilities and their families.*

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## Impact

*Feature Issue on Persons with Developmental Disabilities and the Justice System*  
Volume 10 · Number 2 · Summer 1997

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*Impact* is published quarterly by the Institute on Community Integration (University Affiliated Program), and the Research and Training Center on Community Living, College of Education and Human Development, University of Minnesota.

This issue was supported, in part, by Grant #90DD032301 from the Administration on Developmental Disabilities, US Department of Health and Human Services; Grant #H133B30072 from the National Institute on Disability and Rehabilitation Research, US Department of Education; and Grant #90DN0019/02 from the Administration on Developmental Disabilities to the National Advisory Group for Justice. The opinions expressed are those of the authors and do not necessarily reflect the views of the Institute, Center, University, or their funding sources. For additional information contact:

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